

1919

D29

The person charging this material is responsible for its return to the library from which it was withdrawn on or before the **Latest Date** stamped below.

Theft, mutilation, and underlining of books are reasons for disciplinary action and may result in dismissal from the University.

UNIVERSITY OF ILLINOIS LIBRARY AT URBANA-CHAMPAIGN

BUILDING USE ONLY

EUROPEAN INFLUENCE UPON THE MAKING OF THE
AMERICAN CONSTITUTION

18288
72
29

BY

LOXA EDNA DAVIS

THESIS

FOR THE

DEGREE OF BACHELOR OF ARTS

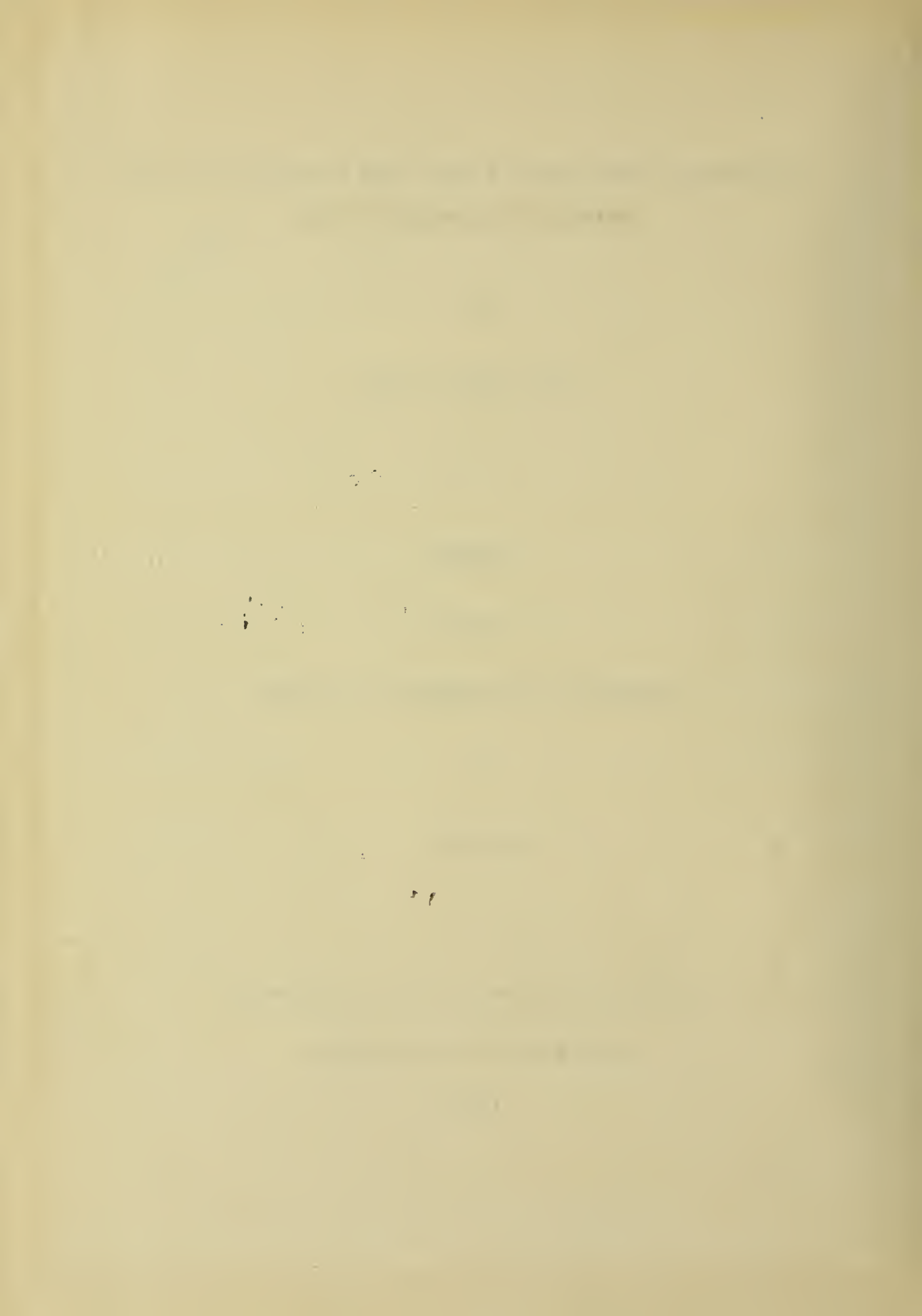
IN

HISTORY

COLLEGE OF LIBERAL ARTS AND SCIENCES

UNIVERSITY OF ILLINOIS

1919



UNIVERSITY OF ILLINOIS

August 7 1919

THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

Lora Edna Davis

ENTITLED *European Influence upon the Making
of the American Constitution*

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF *Bachelor of Arts in History*

Ernst Bruem

Instructor in Charge

APPROVED: *Ernst Bruem*

HEAD OF DEPARTMENT OF *History*



Digitized by the Internet Archive
in 2014

<http://archive.org/details/europeaninfluenc00davi>

TABLE OF CONTENTS

- I. Introduction.
- II. Preparation of the Members of the Federal Convention.
 - a. Prominent lawyers.
 - b. Men born abroad.
 - c. Men educated abroad.
 - d. Other men.
 - e. The extent to which foreign writers were read.
- III. European Influence upon the Form and Strength of Government.
 - a. Influence of ancient countries.
 - b. Influence of modern countries.
 - c. Influence of writers.
- IV. European Influence upon the Legislative System.
 - a. Form of congress.
 - b. Basis of representation.
 - c. Qualifications and election of congressmen.
 - d. Length of term.
 - e. Privileges of members.
 - f. Salary of members.
 - g. Meeting of congress.
 - h. Suffrage in Congress.
 - i. Powers of Congress.
 - j. Provisions for publicity
- V. European Influence upon the Executive.
 - a. Number.
 - b. Length of term.
 - c. Election.
 - d. Qualifications.
 - e. Salary.
 - f. Powers.
- VI. European Influence upon the Judiciary.
 - a. Impeachment.
 - b. Court System.
 - c. Definition of Treason.
 - d. Habeas Corpus.
 - e. Ex post facto.
- VII. Conclusion.

European Influence upon the Making of The American Constitution.

I.

Introduction.

If one studies the making of the constitution of the United States, he finds that many influences have left their imprint upon that document. In it can be found traces of the influence of the colonial governments, of the government under the Confederation, and of European influences. A careful study of the formation of the constitution reveals the fact that commerce between the United States and Europe played an important role in the making of this document. Indeed, the meeting at Annapolis which led to the convention of 1787 was called to consider the trade and commercial systems of the United States. A contemporary writer, speaking of the commissioners to the Annapolis convention, said they "were appointed by various states to propose a general plan of commerce, and to give to congress the powers necessary to execute."¹ The debt which the United States owed to European countries likewise had its effect on the formation of the constitution. Repeatedly in the source material of this period is found a direct reference to the condition of the credit of the United States. As early as July 21, 1782, the New York legislature passed resolutions

1. Hart "Contemporaries", III, 185.

"for a General Convention of the States," which read, "Notwithstanding the generous intentions of an ally from whom we have experienced and doubtless shall still experience all possible support, exigencies may arise to prevent our receiving pecuniary succors hereafter in any degree proportioned to our necessities."² Governor Randolph in the federal convention when the two plans of government³ were being discussed, declared, "When our all is at stake, I will consent to any mode that will preserve us. View our deplorable situation- France, to whom we are indebted in every motive of gratitude and honor, is left unpaid the large sums she has supplied as with in the day of our necessity."⁴ Then, too, the United States wished to be well thought of in Europe and there is little doubt that public opinion in foreign countries stimulated the desire for a stronger government. Europe at this time was waiting to see the power of the new nation, and the leaders of the United States felt that in order to command the respect of Europe, a firm government must be instituted. Jay, writing during the period of ratification, said, "But whatever may be our situation, whether firmly united under one national government or split into a number of confederacies, certain it is that foreign nations will know and view it exactly as it is; and they will act toward us accordingly."⁵ In yet another way Europe made itself felt in the constitutional convention and during the period of ratification.

.....
2. Hamilton, "Works", I, 297.

3. Federal or confederate.

4. Farrand, "Records", I, 262.

5. "Federalist", No.4.

It afforded patterns of government, some of which were deliberately copied and others as diligently avoided. It is this phase of European influence with which this paper has to deal. It will endeavor to point out just how far consciously the makers of the constitution followed or avoided the models afforded by the governments of Europe.

In treating this subject, it seems best to divide it into five topics: preparation of members; European influence on the form and strength of government; European influence upon the provisions for the legislature; European influence upon the executive; and European influence upon the judiciary.

II.

Preparation of the Members of the Federal Convention.

Let us consider first, then, how well prepared the members of the constitutional convention were for performing the stupendous task which confronted them, the making of a new form of government. The convention was originally called for the purpose of revising the Articles of Confederation, but it made a new constitution instead. Gathered at Philadelphia in this convention were forty-eight of the most learned and renowned men of the country. Statesmen, lawyers, business men, and farmers were present. Of this number the majority were lawyers, twenty-six in all. Eight of these took a prominent part in the debates of the convention and later figured in the conventions of their own states which were called for the purpose of ratifying the constitution. These were William Davie, from North Carolina; John Dickinson, from Delaware; Oliver Ellsworth,

from Connecticut; William Livingston, from New Jersey; Gouverneur Morris, from Pennsylvania; Charles Pinckney, from South Carolina; Edmund Randolph, from Virginia; and John Rutledge, from South Carolina. James Madison, of Virginia, should also be included in this list because, while he did not practice law, he had prepared himself for that profession and his legal knowledge was quite broad.

William Richardson Davie was born in England¹, but his parents came to this country while he was yet a young boy, so that his actual life in England had little effect on his later political doctrines. After graduating from Princeton, he was admitted to practice law in the county courts of North Carolina² and in 1780 secured his superior court license.³ Sparks says of Davie, "His studies had rendered him familiar with the theory and practical workings of different systems of government, and he was in no degree deficient in the discernment and forecast, which enable one to seize the merits and anticipate the results of a new scheme."⁴

At the age of eighteen, John Dickinson began the study of law in Philadelphia under a lawyer who had studied in the Temple.⁵ Here Dickinson became familiar with the English law and seemed to be especially interested in Coke, one of the great English lawyers. A biographer of Dickinson says, "He then laid.... the foundation of that knowledge of the common law and especially of that great familiarity with English history, and English constitutional law... by which he was distinguished above all his contemporaries."⁶

.....

1. Sparks, "Library of American Biography", XV, 3.
2. " " " " " XV, 11.
3. " " " " " XV, 12.
4. " " " " " XV, 86.
5. Stille, "Life and Times of John Dickinson", 19.
6. Stille, "Life and Times of John Dickinson", 20.

Later, Dickinson studied law in the Temple itself.⁷ Stille sums up Dickinson's usefulness thus, "He was certainly one of the most useful and conspicuous members of that illustrious body which framed the Constitution of the United States....and an examination of the records of the Convention will show how vastly important were his acquaintance with the general principle of English free institutions and his long experience and profound knowledge of affairs in settling the foundations of our great system of constitutional law."⁸ In yet another way, Dickinson exerted his influence during this period. While the constitution was being ratified, pamphlets and short publications of all sorts flooded the country. Among these were some letters signed "Fabius," which were written by Dickinson. These were in favor of the constitution and in them is displayed the author's knowledge of European and especially English government.⁹

Less information is to be had regarding the education of William Livingston. He graduated from Yale in 1741 and immediately began studying with a New York lawyer. In the records of the federal convention and in those of his own state convention we find Dickinson alluding again and again to European history and law in such a manner as only a serious student of those subjects could.

Edmund Randolph also was among the more brilliant members of the convention. After his graduation from college he studied law
.....

7. The Temple Inns were law schools in London in which the English law and constitution were studied. Anyone practicing law in England had to study in one of these inns of law, the Inner Temple, the Middle Temple, or the Outer Temple.

8. Stille, "Life and Times of John Dickinson", 258.

9. Usually published with the "Federalist."

with his father, who was quite prominent.¹⁰ He served in the continental congress and during his term from 1780 to 1782 he had charge of foreign correspondence.¹¹ Conway says of him, "No American more thoroughly knew the principle of English law and liberty."¹² Randolph also definitely prepared for the work of 1787. Conway writes that as early as 1783 Randolph had been trying to find the fundamentals of a constitution, feeling that the Articles of Confederation would soon have to be changed. He finds in a note of Randolph's of March 7, 1783, a constitution defined as "a compact in which the people themselves are sole parties, and which they alone can abrogate; delineating the degree to which they have parted with legislative, executive and judiciary powers, as well as prescribing how far each of the simple forms of government is to be pursued in acts of legislation."¹³ March 27, 1787, Randolph wrote to Madison, "I have turned my mind somewhat to the business of May next."¹⁴ The results of Randolph's studies are to be found in the plan of government which he submitted to the convention.¹⁵ In its original form it was much like what the English government would be today without a monarch and with the second chamber of the legislature chosen by the House of Commons.

As has been said before, James Madison, while he did not practice law, was well educated and trained for that profession. In 1772 he graduated from Princeton College and on returning to his

10. Conway, "Omitted Chapters in History, Disclosed in the Life and Papers of Edmund Randolph," 14.

11. *ibid*, 43.

12. *ibid*, 89.

13. *ibid*, 72.

14. *ibid*. 71. Madison replied that he too had been thinking of the work in hand.

15. The Virginia plan.

home continued his preparation for admission to the bar. But he went into public life instead. Madison also very diligently prepared for the work of the conventions. At this time his good friend, Jefferson, was in France and Madison wrote to him for books. March 16, 1784, he wrote, "I will only particularize my wish of whatever may throw light on the general constitution and droit public of the several confederacies which have existed. I observe in Boinaud's catalogue several pieces on the Dutch, the German, and the Helvetic. The operation of our own must render all such lights of consequence. " Then he asked Jefferson to get tracts of Bynkershoek¹⁶ and other European writers.¹⁷ Some of these evidently arrived for Madison thanked his friend for them in a letter dated August 20.¹⁸ Again on April 27, 1785, he wrote to Jefferson for certain books. He wanted "treatises on the ancient or modern foederal republics- on the law of Nations - and the history natural and political of the New World; to which I will add such of the Greek and Roman authors where they can be got very cheap, as are worth having,the translation (French) of the Historians of the Roman Empire during its decline,....Pascal's Provincial letters¹⁹ - Don Ullva²⁰ in the Original - Linnaeus best edition

16. A German writer on political science.

17. Madison, "Works", II, 43.

18. *ibid*, II, 64.

19. A French religious philosopher and mathematician. These letters are valuable mostly from the literary standpoint.

20. It is impossible to determine with this meager bit of information exactly what writer was meant. The "Dictionary of Political Science," III, 596, gives a Spanish writer by this name as the author of "Restablecimiento de las Fabricas y Comercio Espanol," published 1740. The "Grand Dictionnaire Universelle" by Larousse, 640, gives two other Spanish historians by this name, Antonio de and Martin de. But as the former died in 1580 and the latter not until 1800, it is probable that Martin de Ullva is meant.

Ordinances Marines²¹ - Collection of Tracts in French on the
Oeconomics of different nations, I forget the full title. It is
much referred to by Smith on the 'Wealth of Nations.'²² His
letters also show that he was not only reading, but was in addition
attempting to work out a plan of government. In a letter dated
August 23, 1785, he outlined some salient points which he thought
a good government should possess. Speaking of the judiciary, he
wrote, "Its efficacy is demonstrated in Great Britain where it
maintains private Right against all the corruptions of the other
two departments and gives a reputation to the whole Government
which it is not in itself entitled to."²³ He wanted a court of
chancery as distinct from the court of law and cited Lord Bacon as
his authority.²³ Again in a letter to Randolph, dated April 8,
1787, Madison showed that he was strongly influenced by the English
government. In this letter he expressed his desire that the
national government should have a negative on the state laws sim-
ilar to that which the king of England had on local laws.²⁴ But
more significant even than his letters was a small memorandum which
Madison had, "of Ancient and Modern Confederacies written on small
sheets of paper, which, put together formed a compact little book,
suited to be carried in the pocket." There were thirty-nine pages
of this and it contained notes and criticisms on the Lycian Con-
federacy, Gryson League, Amphyctionie Confederacy, Achaean Con-
federacy, Helvetic Confederacy, Belgic Confederacy and the Germanic

.....
21. The "British Museum Catalogue of Printed Books" gives no one with
this name except a Swedish botanist and no writing of this
sort is listed among his works.

22. Madison "Works", II, 134.

23. Ibid, II, 170

24. Ibid, II, 338.

Confederacy. The memorandum analyzes these various governments and notes their good and bad points.²⁵ The supposition is that Madison kept these with him for reference during the constitutional convention.

Oliver Ellsworth of Connecticut spent the first two years of his college life at Yale and the remaining ones at Princeton.²⁶ His father wished him to become a minister and he studied accordingly. But he became more and more interested in law and finally devoted all his time to it, being admitted to the Connecticut bar in 1771.²⁷ A biographer says of Ellsworth at Princeton, "The acquaintances Ellsworth made there and the outlook he gained, were doubtless a better introduction to the whole field of colonial politics than he could have got at any other college."²⁸ Brown likewise thinks that the legal education which Ellsworth received after leaving college was of little depth. He lists Bacon's, "Abridgements", Jacob's "Law Dictionary" and probably Blackstone's "Commentaries" as the texts which Ellsworth studied.²⁹ Ellsworth's legal training is summed up thus: "It is altogether improbable that Ellsworth possessed, at the outset of his professional career, any such store of facts or principles as would now be required of him in an examination for admission to the bar of any New England state. Yet the way he did learn the law was not unlike the method of studying

.....

- 25. Madison, "Works", II, 369-390.
- 26. Brown "Life of Oliver Ellsworth", 13-18.
- 27. *ibid*, 21.
- 28. Brown "Life of Oliver Ellsworth", 20.
- 29. *ibid*, 22 and 23.

and teaching it which has come of late into a very wide acceptance. He mastered it only by searching out and storing in his mind the principles at the heart of particular cases. In that process is involved the essence of the modern case-system. It is doubtful if a better training for the reason has ever been devised."²⁹ By the time of the constitutional convention, Ellsworth had become a supreme judge in the State of Connecticut³⁰ and the debates show that in spite of his meager education in law when he began his profession, by 1787 his knowledge in this field was both broad and deep.

The material about Pinckney, Rutledge, and Gouverneur Morris is less abundant and while they may have been as well prepared as the ones just discussed, yet we have no direct evidence of such preparation. We find in the records of the convention all of these men taking part and infer from their speeches a knowledge of European governments. But in this group, it is only of Gouverneur Morris that we have much evidence of preparation for the tasks of the convention. The others were renowned lawyers, Pinckney having been educated in England and read law at the Temple.³¹ Gouverneur Morris graduated from King's College in 1768 and began studying law with a man who later became chief justice of New York.³² Morris was licensed to practice law three months before he was twenty years old.³³

.....

29. Brown "Life of Oliver Ellsworth", 23

30. *ibid*, 119.

31. Curtis, "History of the Constitution of the United States, I, 369-390

32. Morris, "Diary and Letters of Gouverneur Morris," I, 1-18.

33. Curtis, "History of the Constitution of the United States" I, 462.

Three other members were born abroad. These were James McHenry Robert Morris³⁵ and James Wilson. Of these, Wilson only had much influence in the convention along the line with which this paper deals. Wilson was born in Scotland about 1742. He received a fine education, studying at Glasgow, St. Andrews, and Edinburgh. He came to America in 1766 and was soon elected to the faculty of Philadelphia College. He studied law and was admitted to the bar.³⁶ No other member of the convention shows more familiarity with European government and history than does Wilson. And in the Pennsylvania convention for ratification, he again and again alludes to European precedent. During the debates in this convention, he said, "I have endeavored, in all the books that I have access to, to acquire some information relative to the Lycian Republic, but its history is not to be found." He also quotes in the same speech from Montesquieu and Necker, showing that he is familiar not only with European history and government, but with writers as well.³⁷

Two other members of the convention should be included in this discussion. These are Alexander Hamilton and Benjamin Franklin. Hamilton was educated at King's College and at the age of seventeen wrote an essay on "Rights of the Colonies," in which he displayed a rather unusual knowledge of English constitution.³⁸ Curtis says

.....

34. McHenry was born in Ireland and received a classical education at the University of Dublin. His attendance at the convention of 1787 was evidently a small part in his career and he did not figure in the debates of that body. Brown, "Sketch of the Life of Dr. James McHenry," 2.
35. Morris was born in Liverpool and brought to America while he was yet a young boy. He was more interested in commerce than in politics as such. Graham, "Robert Morris", 1.
36. Curtis, "History of the Constitution of the U.S.", I, 462
37. Elliot, "Debates," II, 483.
38. Curtis, "History of the Constitution of the U.S.", I, 410

of him, "He understood America as thoroughly as the wisest of his contemporaries, and he comprehended England more completely than any other man of that age upon this continent."³⁹

Benjamin Franklin was rather uniquely prepared for the work of the Convention from having been abroad, both in England and in France. He was a resident agent in England for some of the colonies⁴⁰ for several years before the revolution. While in England he saw the workings of the English government at close range, occupying a seat in the House of Commons. During his ministry in France, 1776-1785, he gained a knowledge of the French government. That Franklin was well read in politics is shown by the fact that European writers consulted him on this subject. A foreign writer wrote to Franklin, sending him copies of his work on "Science of Legislation." The author said, "The volumes contain the fourth book of the work, which has for its subjects the laws which concern education, manners, and public instruction. My ideas on this subject are certainly new, but are they sound? As to this point, it belongs to you more than anyone else to decide."⁴¹ A man so recognized should be well suited for the task of the Philadelphia convention.

It has been pointed out above that certain European writers on politics, government, and economics has been read rather extensively by certain men. Other writers had also been read by the members of the federal convention and were again and again referred to as authority on various subjects. French writers were most

.....
39. Curtis, "History of the Constitution of the U.S.", I, 410.
40. Ga., N.J., Mass. and Penn.
41. Franklin, "Works", X, 237.

often quoted, and of these the great Montesquieu most frequently. Colbert and Necker, two French economists of the time of Louis XVI, were also frequently mentioned, especially by those greatly interested in economics, such as Hamilton. English writers were likewise often referred to. Blackstone, one of the greatest lawyers, was most often quoted. At first it may seem strange that Locke was not often mentioned. But on second thought it does not seem remarkable because he was concerned more with the fundamental foundations of society than with government itself. Mention was also made of a writer named Priestly. By this must have been meant Priestley, an English philosopher and writer. Sidney and Harrington were the remaining two English writers mentioned. These were publicists of the seventeenth century. Scotland also furnished one writer on government, Rutherford, who lived from 1791 to 1854. Two Swiss writers on law and government were referred to, Vattel, 1714-1767; and Burlamagui, 1694-1748. Only one ancient writer was found mentioned, Plutarch. His work mentioned was his, "Life of Themistocles." In general, then, we may say that modern writers were referred to in connection with the making of the constitution more often than ancient ones; and that of these, French, English, and Swiss writers were quoted most often as authorities.

III.

European Influence upon the Form and Strength of Government.

Naturally, from men well read in history and government would be expected many allusions to those fields. One of the questions

most discussed was, what the form of government should be. The two forms most ardently advocated were federal and confederate. Those who wished a federal government wanted the national government supreme over the states. Those desiring a confederate government wished to keep the states supreme over the national government.¹ Both ancient and modern governments were used as precedents. The ancient countries more often pointed to mere Greece and Rome. In the correspondence before the convention the history of Greece, especially the Amphyctionic and Achaean leagues, was discussed as something which was to be avoided in America. Hamilton as early as 1780 in his letters showed a desire for a strong government. He spoke of Grecian republics as being always at war because they were not united.² Again in the "Continentalist"³ Hamilton urged a strong government. In the first, speaking of the commonwealths of Greece, he said that a weak executive and "the want of a solid federal union to restrain the ambition and rivalry of the different cities, after a rapid succession of bloody wars, ended in their total loss of liberty, and subjugation to foreign powers."⁴ In the second of these essays he made still more emphatic this idea that the stronger member of a confederate union will overturn the government and he again cited the Amphyctionic league. In the third of the series he asked, "Is it

1. A few men leaned toward monarchy. Hamilton was one of these.

2. Hamilton, "Works", I, 207.

3. Lodge considers the "Continentalist" as the series of essays which began the movement for a constitutional convention.

4. Hamilton, "Works", I, 235.

not to be feared that the resolutions of Congress would soon become like the decisions of the Greek Amphictions?"⁵

Likewise, in the federal convention, the Amphyctionic and Achaean leagues were referred to as something to be avoided on account of their weakness. A few examples will show this. Hamilton on June 18th showed that a confederation was weak and would lead to war. He pointed to the Amphyctionic council as an example and said that while it seemed to have powers sufficient for itself, yet when it attempted to use force against a member it was a signal for war, as was shown by the Phocian War.⁶ July 7, Gouverneur Morris declared that local jurisdiction when carried to the extreme of a confederation would destroy every tie among the members and he cited the Grecian states for an illustration.⁷ In answer to the advocates of the New Jersey plan, Madison asked if that plan would insure against foreign influence over the members of the confederation. He specified "intrigues practiced among the Amphyctionic Confederates first by the Kings of Persia and afterwards fatally by Phillip of Macedon: Among the Achaeans, first by Macedon and afterwards no less fatally by Rome."⁸ Hamilton on June 18, showed another weakness of confederacies when he brought out the fact that in the Amphyctionic league when quotas were to be raised, the decrees of the council were disregarded. Yates in his notes for this day recorded, "The Amphyctionic council of Greece had a right to require of its members troops, money and the force of the country.

.....

5. Hamilton, "Works", I, 553.
6. Farrand, "Records", I, 285.
7. *ibid*, 553.
8. *ibid*, 319.

Were they obeyed in the exercise of these powers? Could they preserve the peace of the greater states and the republics? or where were they obeyed? History shows that their decrees were disregarded, and that the stronger states, regardless of their power, gave law to the lesser."⁹

Again, during the period of ratification the Grecian leagues were referred to both in the state conventions and in publications, in the light of forms of government to be avoided. In the New York convention was mentioned the feebleness of the Amphyctionic league and the fact that it had no power to enforce its decision.¹⁰

Randolph in the Virginia convention declared that the Amphyctionic council owed its downfall to confederate government and Madison showed that the continual dissensions in the Achaean league were due to the confederate form of government.¹¹ Of the various pamphlets and letters which were written at this time, the "Federalist"¹² is best preserved for us and in it also are found warnings against such a form of government as that of the Amphyctionic and Achaean leagues. In the fourth number, Jay pointed to the failures of the states of Greece, saying, "It is not improbable that what has so often happened would, under similar circumstances, happen again." In number eighteen, Hamilton gave a rather detailed account of the downfall of the Grecian Confederacy

.....

9. Farrand, "Records", I, 296.

10. Elliot, "Debates," II, 234.

11. *ibid*, III, 130. The examples are typical of all the state conventions.

12. A publication written by Madison, Hamilton, and Jay with the purpose of winning opponents to the constitution.

associated under the Amphyctionic council and also of the downfall of the Achaean League. His point was that the weaknesses of these two governments was that they were confederacies and to this he attributed the cause of their downfall. "Had Greece," he wrote, "been united by a stricter confederation, and persevered in her union, she would never have worn the chains of Macedon; and might have proved barriers to the vast project of Rome." But he added, "There was definitely more of moderation and justice in the administration of its [Achaean League] government and less of violence and sedition in the people, than were to be found in any of the cities exercising singly all the prerogatives of sovereignty:..... because it was there tempered by the general authority of the confederation." Then he declared that a still stronger union would make for more efficiency in government. To sum up the influence which Greece exerted on the form and strength of the government provided for in the constitution, we may say that those responsible for the calling of the convention, the members of the convention, and the ones who worked most strenuously for the ratification of the constitution saw in the Amphyctionic and Achaean leagues dangerous examples which were to be diligently avoided.

The remaining ancient government referred to can be disposed of in a few sentences. These include Sparta, Rome, Carthage and Persia. The opponents of the federalistic idea urged that several republics would be better on this continent than one and that the bonds of commerce would hold them together and prevent wars. In the sixth number of the "Federalist" hamilton showed from history that this is not true. He pointed out that Sparta, Athens, Rome and Carthage were republics and were very war-like. He also cited

Venice as a later example of this. Other enemies of the federal plan held that it would be impossible to have a strong federal government with state as subdivisions and friendly to the superior government. Wilson in the federal convention on June 16 showed from history that governments usually do have subdivisions and pointed to Persia and Rome as examples. There was harmony in those countries among the central government and the various state governments, he declared.¹³ Rome was again referred to when Hamilton brought out the idea that if a weak government were established, the occasion might arise whereby it would be necessary to swing to the other extreme. He said, "Establish a weak government and you must at times overlap the bounds. Rome was obliged to create dictators."¹⁴

Modern countries likewise furnished ideas of government to the members of this assembly at Philadelphia. Of these we find Poland, Germany, Switzerland, Holland, and Great Britain most referred to.¹⁵ The division of Poland in 1772 was often referred to as the fate of countries which have weak governments. In that year Poland had lost large sections of her territory to Russia, Prussia, and Austria. The more recent historians as well as the earlier writers attribute her downfall largely to a weak internal government. Lord says of Poland's downfall, "It seems clear, however, that the decline of Poland is to be traced primarily to po-

.....
13. Farrand, "Records", I, 322.

14. *ibid*, 329.

15. Sweden was referred to once. In the twenty-second number of the "Federalist", Hamilton showed from history that there had been a great deal of corruption in confederacies. He said that in Sweden parties were bought and sold alternately by England and France.

litical causes, to the defects of a wretched system of government. Whatever other cause of weakness one may discover,.....these are all of but secondary importance. These evils, or equally grave ones, could be met with in other European states of the old regime, and yet no other great state atoned for them by the loss of its existence. For everywhere else there was a government strong enough to curb or diminish the destructive tendencies and to produce or assist invigorating ones. Poland alone had no such correcting or ameliorating force. Poland had no effective government whatever. The nation lived in an anarchy thinly concealed under the forms of an elaborate republican constitution. It is in the unfortunate historic evolution of that constitution that the explanation of the decline of Poland is to be sought."¹⁶ By the time of the constitutional convention, Poland had begun to reorganize her government but was making little head-way because her central government was not strong. In fact, it could scarcely be called a central government because each of the large Polish nobles was practically a petty king. A good example of the light in which Poland was regarded was made in the nineteenth number of the "Federalist," in which Madison and Hamilton pointed out the weaknesses of modern confederacies and Poland was given as an example. They wrote, "Equally unfit for self-government and self-defense, it has long been at the mercy of its powerful neighbors to disburden it of one-third of its people and territory."

Germany also in general was held to have a government the likeness of which was not desired in the United States. In the second number of the "Continentalist," Hamilton in pointing out

16. Lord "The Second Partition of Poland", 7.

that a federal government would be overturned by the stronger government gave the German Diet as an example.¹⁷ Referring to it again in number three, he asked, "Is it not to be feared that the resolution of Congress would soon becomelike the edicts of the German Diet."¹⁸ In the convention also we find references repeatedly to the German Confederation. For example, on July 7th Gouverneur Morris declared that unless we united, our country would be in the same disunited conditions as Germany had been because people would think it more important to support local governments than the central one as they did in the Empire.¹⁹ He declared that local jurisdictions would destroy every tie of unity. Madison, June 9, stated that the larger states of a confederacy would be impregnable and the smaller states would feel the vengeance of the larger ones. He drew illustrations from the German Empire.²⁰ Again on June 19th Madison in answer to Patterson, who wished a confederate form of government, traced an analogy between the Germanic Confederation and the conditions that would prevail in the United States if that form of government were continued. He held that in Germany it had been the tendency of particular members to usurp powers and bring confusion and ruin on all and the same would be expected in America!²¹ In the period of ratification also this country was cited as weak. A typical statement is found in the nineteenth number of the "Federalist". In this Madison and

.....

17. Hamilton, "Works", I, 240. The Diet had no power to enforce its decrees.

18. *ibid*, 242.

19. Farrand, "Records", I, 553.

20. *ibid*, 320.

21. *ibid*, 317.

Hamilton cited failures of modern confederacies. They used Germany for their first illustration and pointed out its weaknesses. They showed that it had been subject to every kind of internal war. The fundamental principle on which it rests, that the empire is a community of sovereigns and that the laws are addressed to sovereigns, renders the empire a nerveless body, incapable of regulating its own members, insecure against external dangers, and agitated with increasing fermentation in its own bowels."

But in one way Germany furnished a favorable argument for those advocating the constitution. One of the arguments used against it was that the United States was too large a country for a united nation and that it should be split into several smaller ones. At various times European nations were shown to be approximately equal in size to the United States and Germany was one used as an illustration. For instance, in the thirteenth number of the "Federalist" Hamilton refuted this argument by declaring that the United States is not a great deal larger than Germany, in which a representative diet met.²²

Switzerland likewise served as an example mainly for the advocates of the new form of government. It was cited as an argument against a confederacy because of its weakness. For instance, in the nineteenth publication of the "Federalist," Hamilton and Madison in pointing out that history showed confederacies to be weak, wrote that the separation of Switzerland into cantons "produced opposite alliances with foreign powers: of Berne, at the

.....
22. He also said that the country was little larger than Poland before its dismemberment and also that in England the northern representatives, i.e., from Scotland, have as far to travel as any in the United States would have.

head of the Protestant association, with the United Provinces; and of Luzerne at the head of the Catholic association with France." This, they insinuated, would be the case in any country with a decentralized confederate government,- the various parts would have different foreign interests and relations. In the Philadelphia meeting on June 19, Madison asked if the New Jersey plan would prevent foreign influence over the various members of the league. He said that in Switzerland there had been a great deal of foreign corruption by Austria, France and the lesser neighbors.²³ The Swiss confederacy was also used to show the internal condition of a country with this kind of government. Hamilton in the federal convention on June 18 pointed out that the Swiss cantons had scarcely any union and were always at war with each other.²⁴ But on the other hand, it is interesting to note that the opponents of the federal system also found justification for their position in the Swiss confederacy. In the first place, the advocates of the New Jersey plan saw it as a model. They held that here was a state in which the various parts, the cantons, had equal representation regardless of population. For example, Berne and Lucerne had different populations, yet each had an equal voice in the general assembly.²⁴ Then, too, the very fact that Switzerland had existed for a long time with this form of government had weight with certain people. Henry declared in the Virginia convention for ratification that a confederacy would stand; the Swiss confederacy had stood for 400 years and we would do well to establish a government which would

.....
23. Farrand, "Records," I, 319.

24. *ibid*, 285.

last as long.²⁵ Switzerland was to the federalists a weak government and an example in a negative fashion; to the anti-federalists it was a country of long standing, because of this its form of government was to be copied.²⁶

Similarly, Holland was cited for much the same purpose as was Switzerland, except that only the friends of the constitution used it as an illustration of their points. The Statholder was at the head of the Dutch confederacy. In 1787 Frederick William II sent an army into Holland against certain parties which were oppressing the friends of the Statholder who were adherents of England. At this time Austria was in need of an ally to help her carry out certain designs on the East. In order to get the support of England, Frederick William II sent this army into Holland. Such was Holland's situation at the time of the convention and different men pointed to it as an argument against a confederacy like the Dutch. In the twentieth number of the "Federalist" is one of the clearest statements of this argument. In this essay Hamilton and Madison showed that this war was due to the confederate form of government. They said that the characteristics of the confederacy were "imbecillity in government; discord among the provinces; foreign influence and indignities, a precarious existence in peace, and peculiar calamities from war..... the important truth which it [experience] unequivocally pronounces in the present case [Holland] is that a sovereignty over sovereigns, a government over governments, a legislature for communities as contradistinguished from

.....

25. Elliot, "Debates", III, 62.

26. *ibid.*

individuals, as it is a solecism in theory so in practice it is subversive of order and ends of civil polity, by substituting violence in place of law, or the destructive coercion of the sword in place of the mild and solutary coercion of the magistracy." Again and again great stress was laid on the fact that Holland, as a confederacy, had had repeatedly unsuccessful wars. In the Massachusetts convention, Rufus King in upholding the federal form of government declared that the lack of efficiency was what caused Holland such distress in the forty years of war with Spain.²⁷ The internal weakness of Holland was also used as an argument against confederacies. For example, in the Connecticut convention the Dutch republic was referred to as having no force; this weakness caused internal dissensions and finally force had to be used.²⁸ In the field of revenue also Holland furnished an example. Hamilton in the fourth number of the "Continentalist" showed that revenues under the old system would not be sufficient. Referring to Holland he wrote, "Taxes in the United Provinces are practicable here. Not only the living are made to pay for every necessary of life, but even the dead are tributary to the public for the liberty of interment at particular hours." He further argued that if such was the case in Holland, still worse conditions could be expected in the United States under similar government because it was so much poorer.²⁹ An argument was also drawn from Holland to refute those advanced by men who wished to see the country divided into several independent states. It was argued that small states, such as these

27. Elliot, "Debates", II, 55.

28. *ibid*, "Debates", II, 188. The Statholder is meant.

29. Hamilton, "Works", I, 251.

would necessarily be, would find it harder to defend and protect themselves. Oliver Ellsworth in the opening debate of the Connecticut convention declared this to be the case in Holland.³⁰ To Holland, then, few men looked for precedent to be followed because of its unfortunate war with Austria. Lack of sufficient revenue in Holland and internal dissensions were urged as further evidence that a confederate government would fail.

In spite of the fact that the revolution was yet prominent in the minds of the people, still influential men in America realized that the English government was strong and firm. This much they desired to copy although most of the people wished to avoid the semblance even of a monarchy. But the strength of the British government was desired only by those who wished a federal form of government. Dickinson in the federal convention on June 7 said the variety of interests of the various parts of the country need not be a barrier to the establishment of a firm central government. Yates' notes on this speech are, "The objection (to the constitution) is that you attempt to unite distinct interests- I do not consider this an objection, Safety may flow from this variety of interests. There exists this diversity in the constitution of Great Britain."³¹ In connection with Great Britain was brought forward repeatedly the fact that both England and Scotland were better off after than before their union. For example, Randolph in the Virginia convention used this as an illustration in favor of a stronger union.³² Jay in the fourth publication of the

.....
30. Elliot, "Debates", II, 187.
31. Farrand, "Records", I, 159.
32. Elliot, "Debates," III, 75.

"Federalist" pointed to Great Britain as a mighty nation and then he proceeded to ask what would it be if the militias and navies of Great Britain, Scotland, and Wales were each under a separate government, inferring that the same result might be expected in a dis-united America. In the following number Jay discussed more fully the good points of the British union. He quoted from a letter of Queen Anne's of July 1, 1706 to the Scotch parliament on the importance to both countries of a union. He showed that until the parts of the island were united, there was continuous and perpetual warfare. This, he said, would be the case if the United States were divided.³³ It is interesting to note, however, that in this same connection certain men thought the English government weak, and that was an argument against the proposed constitution. For instance, Patrick Henry declared in the Virginia convention that the English government was not strong, but weak; and that if it had been strong and concentrated, the American revolution could not have succeeded.³⁴ At another time in the convention Henry said that it

33. One can detect in this same essay an interesting trace of an attempt to intimidate the southern states when the writer added that in the past, northern countries had been stronger than southern ones, and that would probably be the case if the United States were separated. He further suggested that there would be alliances of these stronger states as in Europe. He wrote, "Nay it is far more probable that in America, as in Europe, neighboring nations acting under the impulse of opposite interests and unfriendly passions would frequently be found taking different sides."

34. Elliot, "Debates", III, 173.

was from our British ancestors that we had drawn our liberty and that a federal government which would be very different from British ideals would tend to destroy that liberty.³⁵ So then, the British government furnished an example both for the friends and the enemies of the constitution. Its advocates saw in this document a semblance of the strong centralized government of Great Britain, a thing which they desired. On the other hand, the opponents of the constitution saw in the British government one which was decentralized. This they admired and since they thought the constitution did not provide for this, they opposed it.

In addition to European governments the writings of various publicists on political science, finance, and economics were consulted on problems connected with the establishment of a government. Montesquieu as in favor of a weak central government. That writer had said that when "you give titles of nobility, you know what you give; but when you give power, you know not what you give." Henry thought that too much power had been given to the 'central' government provided in the new constitution.³⁶ But it is interesting to note that in the same convention Montesquieu Locke, Sidney, Harrington, and other writers were referred to as wanting a strong government.³⁷ Again a member of the New York convention "begged leave to remind the gentleman that Montesquieu, with all the examples of modern and ancient republics in view, gives it as his opinion that a confederated republic has all the internal advantages of a republic, with the external force of a monarchy."³⁸ The following statements were made in the Massachusetts convention, "It may not,

.....
35. Elliot, "Debates", III, 54.

36. ibid, 165.

37. ibid, 294

38. ibid, II, 224.

therefore, be improper to examine whether the federal constitution proposed has a likeness to the different state constitutions..... for Baron Montesquieu observes, that all governments ought to be relative to their particular principles, and that 'a confederative government ought to be composed of states of the same nature, especially of the republican kind.'" This was an argument for the constitution in as much as it did measure up to that standard.³⁹

Other writers were also mentioned. On June 27 Luther Martin "contended at great length and with great eagerness that the General Government was meant merely to preserve the States Governments: not to govern individuals: that its powers ought to be kept within narrow limits;.... that individuals as such have little to do but with their own states.... In order to prove that individuals in a state of nature are equally free and independent he read passages from Locke. Vattel, Lord Summers-Priestly. To prove that the case is the same with States till they surrender their equal sovereignty, he read other passages in Locke and Vattel, and also Rutherford,"⁴⁰ Two typical instances will show that the advocates of the new system found precedents in European economists. Hamilton in the fourth number of the "Continentalist" urged that a strong government should be established and have control of commerce. He pointed to the work of Colbert and Louis XIV as an example to be followed. In the federal convention on June 18 Hamilton declared that the progress of the public mind against democracy "led him to anticipate the time, when others as well as himself would join in the praise bestowed by Mr. Necker on the

.....
39. Elliot, "Debates", II, 126.

40. Farrand, "Records", I, 288.

British constitution, namely, that it is the only government in the world 'which unites public strength with individual security.'"⁴¹

IV.

European Influence upon the Legislative System.

The constitution of the United States provides for a bi-cameral legislature. In the main this feature of the new government was copied directly from the various states of the union. But some reference is made to European countries in this connection. Pinckney approved of the two branches because of the checks this system would provide. In some observations on the constitution submitted to the Philadelphia convention, May 28, 1787, he pointed out that such was the British System.¹ Those who desired a one-chambered legislature showed that the confederacies of history had had only one branch. The advocates of the bi-cameral system replied that it was because they had known no better. On June 20 in the federal convention Wilson "urged the necessity of two branches; observed that if a proper model was not to be found in other confederacies it was not to be wondered at. The number of them was

.....

1. Farrand, "Records", III, 110. It is interesting to note that when the question of the composition of the house was taken up Pinckney made a long speech comparing the constitution of the United States with European countries. He showed that while England had the best constitution in the world, it was very different from the United States because it had three estates and the United States did not. Hence, he did not consider it necessary to have a hereditary king and an upper house in the United States merely because they were found in England. Farrand, "Records", I, 397-404. It often happened that the men who opposed a certain measure in the federal convention supported that same measure in the constitution while it was being ratified.

(small) and the duration of some at least short. The Amphyctionic and Achaean were formed in the infancy of political Science; and appear by their History and fate, to have contained radical defects. The Swiss & Belgic confederacies were held together not by any vital principle of energy but by the incumbent pressure of formidable neighboring nations: The German owed its continuance to the influence of the H. of Austria."² The only other reference of significance was found in the sixty-third number of the "Federalist." In this it was urged that Athens would have gained much if she had had a more deliberative and cool body. This it was expected the Senate would do for the United States. This essay also pointed out that all long-lived republics had senates. Sparta, Rome, and Carthage were given as examples. In general, then, certain European governments furnished an example of a bi-cameral system and others were cited as examples which would have been improved by a second branch. But the references to European precedent for a bi-cameral legislature are few and rather insignificant.

The provisions in the constitution for equal representation in the senate and proportional in the house were not adopted without a great deal of argument and eventually a compromise between those who wanted equal representation and those who desired representation according to population. Those who wanted equal representation for the states argued in the first place that unless this were granted to them, the small states would be swallowed by the larger ones. The union between England and Scotland was repeatedly referred to, to show that this was not necessary. A typical quotation may be

2. Farrand, "Records", I, 343.

taken from a paper which Franklin presented to the federal convention on June 11. It read, "I recollect that in the beginning of the century, when the union was proposed of the two kingdoms, England & Scotland, the Scotch Patriots were full of fears, that unless they had an equal number of Representatives in Parliament, they should be ruined by the superiority of the English. They finally agreed, however, that the different proportions of importance in the union of the two nations should be attended to, whereby they were to have only forty members in the House of Commons, and only sixteen in the House of Lords. A very great inferiority of numbers! And yet to this day, I do not recollect anything that has been done in the Parliament of Great Britain to the prejudice of Scotland; and whoever looks over the list of public officers, Civil and military of that nation will find I believe that the North Britons enjoy at least their full proportion of emolument."³ King on June thirteenth significantly declared that "Expedients might be devised as he conceived would give them⁴ all the security the nature of things would admit of..... The articles of union between England and Scotland furnish an example of such a provision in favor of sundry rights of Scotland. When that union was in agitation, the same language of apprehension which has been heard from the smaller states was in the mouths of the Scotch patriots. The articles however have not been violated and the Scotch have found an increase of prosperity and happiness."⁵

Another argument advanced by those favoring equal representation to states was that it would give the minority a voice in

.....
3. Farrand, "Records", I, 198.
4. Small states.
5. Farrand, "Records", I, 493.

state affairs. On June 13 Wilson said the majority would always rule the minority whenever it was possible. "That he declared to be the basis of the trouble between England the colonies; England was jealous of the growing power of the colonies and the result was separation." He predicted the same result for the United States if the majority were allowed to rule unchecked.⁶ On June 30 Ellsworth answered those who objected to equal representation in the senate, "The power is given to a few to save them from being destroyed by the many. If an equality of votes had been given to them in both branches, the objection might have had weight. Is it a novel thing that the few should have a check on the many? Is it not the case in the British Constitution the wisdom of which so many gentlemen have united in applauding? Have not the House of Lords, who form so small a proportion of the nation a negative on the laws as a necessary defense of their peculiar rights agst the encroachments of the Commons. No instance (of a Confederacy) has existed in which an equality of voices has not been exercised by it."⁷ But the opponents of this plan likewise drew examples from England on the ground that it would resemble the rotten borough system. Judge Dana in the Massachusetts Convention brought out this comparison.⁸ The rotten borough system was also mentioned in the federal convention as a thing to be avoided.⁹

In yet another way England furnished an example on this phase of the construction of congress, the basis of representation.

.....
6. Farrand, "Records", I, 605.

7. ibid, "Records", I, 484.

8. Elliot, "Debates", II, 49.

9. Bedford in this connection asked, "Are we to act with greater purity than the rest of mankind?" Farrand, "Records", I, 491.

Some wished a large house of representatives, others a small one. Lansing in the New York convention wanted such a system of proportioning congress as to give a large lower house. He argued that the House of Commons had often been corrupted and a congress much smaller would stand a still better chance.¹⁰ Wilson in the federal convention on June 16 said that we should not disregard the lesson pointed out in British government "that the smallest bodies are notoriously the most corrupt."¹¹ But in the Pennsylvania convention Wilson declared that he did not want congress to get too large. He said that the House of Commons consisted of five hundred members and that this was too large.¹² Nicholas in the Virginia convention expressed the same idea. He declared that the reason the king in Great Britain never vetoed a bill was because he did not need to, but instead exercised his influence before the bill was passed. This he said would be true in any large assembly.¹³

During the period of ratification some opponents of the constitution held that thirty thousand were too many people for one person to represent. Hamilton in the fifty-sixth number of the "Federalist" pointed out that in England and Scotland "there will be one representative only to maintain the rights and explain the situation of 28,670 constituents." Yet the value of freedom had been maintained there and he held that one for 30,000 was sufficient in America.

While the topic of the basis of representation was being discussed, countries other than England were mentioned but little because real representative government was to be found only in England. France was referred to by Madison in a speech against pro-

10. Elliot, "Debates", II, 261. 12. Elliot, "Debates", II, 442.
11. Farrand, "Records", I, 254. 13. ibid, III, 12.

portional representation alone, given in the federal convention on June 19. "The great difficulty lies in the affair of Representation; and if this could be adjusted, all others would be surmountable. The expedient proposed by them¹⁴ was that all the states should be thrown into one mass and a new partition be made into thirteen equal parts.... The dissimilarities existing in the rules of property, as well as in the manners, habits and prejudices of the different states, amounted to a prohibition of the attempt. It had been found impossible for the power of one of the most absolute princes in Europe (K. of France) directed by the wisdom of one of the most enlightened and patriotic ministers (Mr. Neckar) that any age has produced to equalize in some points only the different usages and regulations of the different provinces."¹⁵

Quotations from a speech made by Madison in the federal convention June 28 will sum up the points for which the less important states of Europe were cited. Many men from the smaller states feared that those states would be absorbed by the larger ones unless they had special safeguards. Madison's notes record himself as saying, "Carthage and Rome tore one another to pieces instead of uniting their forces to devour the weaker nations of the Earth. The Houses of Austria and France were hostile as long as they remained the greatest powers of Europe. England and France have succeeded to the pre-eminence and to the enmity..... The contentions, not the coalitions of Sparta, Athens and Thebes, proved fatal to the smaller members of the Amphyctionic Confederacy.... what is the condition of the lesser states in the German Confederacy? We all know that they are exceedingly trampled upon and that they owe their safety as far

.....
14. Certain members of the federal convention.
15. Farrand, "Records", I, 321.

as they enjoy it, partly to their enlisting themselves, under the rival banners of the preeminent members, partly to alliances with neighboring Princes which the Constitution of the Empire does not prohibit. What is the state of things in the lax system of the Dutch Confederacy? Holland contains about one half the people, supplies about half of the money, and by her influence, silently and indirectly govern the whole Republic. In a word, the two extremes before us are a perfect separation and a perfect incorporation of the thirteen States. In the first case, the smaller states would have everything to fear from the larger. In the last they would have nothing to fear."¹⁶

European writers were mentioned very little in this connection. Madison on June 28 said, "What was the condition of the members of the Amphyctionic Confederacy. Plutarch (Life of Themistacles) will inform us that it happened but too often that the strongest cities corrupted and awed the weaker, and that judgment went in favor of the more powerful party."¹⁷ In volume three of Farrand are some "Observations on plan of government" by Pinckney which were probably prepared for the convention in his own state. In this is found the following, "This idea, of a just Representation, seems to have been conformable to the opinions of the best writers on the subject, that, in a confederated system, the members ought to contribute according to their abilities, and have a vote in proportion to their importance..... Montesquieu, who had very maturely considered the nature for a confederated Government, gives

.....
16. Farrand, "Records," I, 448, 449. Paterson's notes on this speech have inserted a note to the affect that Poland had been torn apart by the larger states. I, 459.

17. *ibid*, I, 449.

the preference to the Lycian, which was formed upon this model."¹⁸

As one goes through the source material of this period, he usually finds the election of members of the legislature discussed along with the qualifications of members and electors and then the actual provisions for the election itself. In the convention on July 26, Ellsworth did not want public debtors to be disqualified as some men did. These, he said, were excluded in England because it gave undue power to the crown. This would not be the case in the United States.¹⁹ Madison on August 10, "observed that the British Parliament possessed the power of regulating the qualifications both of the electors, and the elected; and the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to the reviews of religious parties." He desired the qualifications and provisions to be definitely fixed in the constitution."²⁰ So much for the qualifications of congress as a whole.

No case of a European precedent for the qualifications of representatives was found.²¹ In general the reasons for the citizenship qualifications for senators was likewise because of fear of foreign influence.²² Yet European precedent was frequently men-

.....
18. Farrand, "Records", III, 109

19. *ibid*, II, 126.

20. *ibid*, II, 250.

21. It was rather from fear of European influence that certain qualifications for the representatives were embodied in the constitution. In the federal convention, August 13, Gerry "wished that in the future the eligibility might be confined to natives. Foreign powers will intermeddle in our affairs, and spare no expense to influence them. Persons having foreign attachments will be sent among us and insinuated into our councils, in order to be made instruments for their purposes. Everyone knows the vast sums laid out in Europe for secret services." Farrand, "Records", II, 268.

On the same day Col. Mason raised an objection to allowing naturalized citizens being in the House of Representatives. "If

tioned as an argument for citizenship qualification of senators. August 9 Pinckney showed that "as the Senate is to have the power of making the treaties and managing our foreign affairs, there is peculiar danger & impropriety in opening its door to those who have foreign attachments. He quoted the jealousy of the Athenians on this subject who made it death for any stranger to intrude his voice into their legislature proceedings."²³ "Butler was decidedly opposed to the admission of foreigners without a long residence in the Country. They bring with them not only attachments to other Countries; but ideas of Govt. so distinct from ours that in every point of view they are dangerous. He acknowledged that if he himself had been called into public life within a short time after his coming to America, his foreign habits, opinions & attachments would have rendered him an improper agent in public affairs. He mentioned the great strictness observed in Great Britain on this subject."²⁴

.....
21 cont.

persons among us attached to G.- B. should work themselves into our councils, a turn might be given to our affairs & particularly to our commercial regulations which might have pernicious consequences. The great House of British Merchants would spare no pains to insinuate the instruments of their vices," Farrand, "Records", II, 272.

Wilson, on the other hand, like many others, desired naturalized citizens to be eligible for representatives. He held that such a disqualification would keep foreigners from migrating to this country. Farrand, "Records", II, 272.

Mason wanted a residence qualification. Without it rich men would get in after having failed in their own state and use corruption. This was the case in England. Farrand, "Records", II, 218.

22. A typical statement of this fear is given in Madison's notes for Aug. 9. Gouverneur Morris was in favor of an extensive citizenship. "Admit a Frenchman into your Senate, and he will study to increase the commerce of France; An Englishman, he will feel an equal bias in favor of that of England." Farrand, "Records", II, 238.

23. Farrand, "Records", II, 235.

24. *ibid*, "Records", II, 236

In the matter of the qualifications of voters, Holland was used as an example. The idea was that suffrage should be broad. On August 7 in the federal convention Butler declared that people would be very jealous of the suffrage. "Abridgments of it tend to the same revolution as in Holland, where they have at length thrown all power into the hands of the Senates, who fill up vacancies themselves, and form a rank aristocracy."²⁵ But we find the custom in England more often referred to. Here the franchise was largely limited to freeholders. Some men would have such a qualification copied in the constitution. Gouverneur Morris was one of these. Mason objected to this and remarked rather tartly that some people imagined that because the freehold was the qualification in England, it was the only proper qualification. Madison then pointed out that in England only a small proportion of representatives was chosen by the freeholders and the greatest part was chosen by cities and boroughs and it was here where the most corruption was.²⁶ On the following day Gorham said Madison did not state the case accurately. He went on, "Cities & large towns are not the seat of the crown influence & corruption. These prevail in the Boroughs, and not on account of the right which those who are not freeholders have to vote, but of the smallness of the number who vote."²⁷ During this discussion of qualifications for electors Franklin gave an example of two American seamen who were confined in a British prison and of two British seamen who were confined in American prisons. The former would not join their captors and fight against

.....
25. Farrand, "Records", II, 202.

26. *ibid*, 204.

27. *ibid*, 216. This is an interesting example of the diverse opinions held on the same illustration.

their own country and the latter would. This, he said, was due to the difference in the suffrage of the common people in America and England.²⁸ So then, we find England rather frequently mentioned by two groups of people. Those who desired a property qualification for electors found their model in England. On the other hand certain persons said this very qualification was an evil and responsible for some of the wrongs in the British government and for that reason should be avoided.

Turning now to the actual provisions for the election of congressmen, we find a dearth of material on this subject also. On August 9 in the federal convention the plan for having each house prescribed the time, manner, and place of election was taken up. Gorham declared, "It would be so improper to take this power from the Natl. Legislature as to restrain the British Parliament from regulating the circumstances of elections, leaving the business to the counties themselves."²⁹ But some considered this a dangerous plan. In the Pennsylvania convention a member stated that if congress could alter the time, place, and manner of elections, it could do as the English parliament once did and extend its term to seven years, inferring that this would be dangerous.³⁰

When the question arose as to how the members of the lower house would get their seats, the advocates of popular election pointed repeatedly to England as their model. Mason argued on May 13 for an election of "the larger branch by the people....It

28. Farrand, "Records", II, 204-205.

29. *ibid*, 240.

30. Elliot, "Debates", IV, 62.

was, so to speak, our House of Commons."³¹ Other countries were also referred to to prove the necessity for popular election. For instance, Madison on June 6 declared that the popular election of one house was necessary in order to prevent the majority from getting control of the minority. Otherwise he thought there would be a conflict between the commercial and farming classes or the debtor and capitalist classes. "In Greece & Rome the rich & poor, the creditors & debtors, as well as the patricians and plebians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens, & their respective provinces: the former possessing the power & the latter being sufficiently distinguished to be separate objects of it?"³² In the "Federalist" likewise, reference was made to ancient governments. In the sixtythird publication it was pointed out that Athens before the reforms of Solon had been governed by nine Archons elected by the people at large. It also pointed out that in Carthage the legislature was elected by the people; in Sparta, the Ephori; and in Rome, the Tribunes.

Similarly, history and contemporary governments were searched in order to find a plan for the choosing of senators. In this connection the English House of Lords was mentioned. This body held its office for life and most members inherited their seat. No instance was found of anyone advocating exactly this. But many persons desired some scheme of election whereby the senate would have the force and strength of the House of Lords. On June 7 Dickinson moved "that the members (of the 2d branch ought to be

.....

31. Farrand, "Records", I, 48.

32. *ibid*, 135.

33. *ibid*, 150.

chosen) by the individual Legislatures." One reason for this was "because he wished the Senate to consist of the most distinguished characters, distinguished for their rank in life & their weight of property, and bearing as strong a likeness to the British House of Lords as possible; and he thought such characters more likely to be chosen by the State Legislatures than in any other mode."³³

As in many other instances England served as an example when the length of term of the congressmen was discussed. To this country we find both those who favored long terms and those who desired short terms turning for precedent. Soon after it was decided to have a bi-cameral legislature, the members of the convention agreed that the senators should serve longer than the representatives. The fact that the House of Lords served for life, however, did not seem to make a life senate desirable in America. But the House of Lords was pointed to as an example of stability, which was thought to be due largely to its long term of office.

The length of term urged for representatives varied from one to three years. Those who urged annual elections did so on the grounds that it would prevent tyranny similar to that practiced by parliament in England, especially the long-term parliaments.³⁴ But in answer to this it was urged that this was necessary where the legislature was supreme as in England, but not in a country like the United States where the constitution was superior to the legislature.³⁵ Dickinson in the federal convention on June 21

.....
33. Farrand. "Records", I, 150.

34. General Heath in the Mass. convention urged annual elections because the first Parliament in Europe was called by Constantine the Great continued for one year. Elliot, "Debates", II, 13.

35. See the fiftythird number of the "Federalist."

argued that in England annual elections were good because the country was so small. But he urged that a country as large as America should have a longer term and he suggested a three-year term. Hamilton likewise wanted a three-year term, his argument being that the seven-year parliament in England did not, as some had said, harm the spirit of democracy.³⁶ Other men also argued that the long parliaments in Great Britain were not harmful. A member of the Virginia convention asked if the English were not quite as free with less frequent elections as they were when the elections were held annually. "Do not," he inquired, "writers agree that life, liberty, and property are nowhere better secured than in Great Britain, and that security arises from their Parliaments being chosen for seven years?"³⁷ But some supporters of the long term went even farther than that and declared that England was actually in better circumstances with a long parliament than she had been under the shorter ones.³⁸

Writers on government were seldom mentioned while the length of term was under consideration. A few men drew arguments from Sidney and Montesquieu in favor of a short term and frequent elections. In the New York convention it was pointed out that Sidney and Montesquieu held that annual elections would bring about the "ardent affections for public weal," and for this reason annual elections were to be desired.³⁹ Likewise in the Massachusetts con-

.....

36. Farrand, "Records" I, 362.

37. Elliot, "Debates", II, 15.

38. *ibid*, 17.

39. *ibid*, 242.

vention Montesquieu was quoted as saying, "The greatness of power must be compensated by the brevity of the duration; most legislators have fixed it to a year; a longer space would be dangerous."⁴⁰

Let us see now to what extent European practice exerted an influence on the provisions for giving congressmen certain privileges. The makers of the constitution saw in England examples of the abuse of privilege and so were determined to give few to congress. Charles Pinckney speaking in the senate March 8, 1800 said, "They⁴¹ well knew how oppressively the power of undefined privileges had been exercised in Great Britain and were determined no such authority should ever be exercised here."⁴² In like manner England was referred to when the question of making senators and representatives eligible to other offices was discussed. June 22 Gorham moved to strike out the provision making congressmen ineligible to office during their term and for one year afterward. "It was true abuses had been displayed in G.B. but no one could say how far they might have contributed to preserve the due influence of the Gov't nor what might have ensued in case the contrary theory had been tried." This motion was opposed by Butler and Mason on the ground that as in England the congressmen would attempt to get offices for themselves and their friends and would corrupt the government.⁴³ Montesquieu was also used as an argument against any such eligibility. Butler on June 23 is quoted as saying, "The great Montesquieu says it is unwise to entrust persons with power, which by being abused operates to the advantage of those

.....
40. Elliot, "Debates", II, 2.

41. The framers of the constitution.

42. Farrand, "Records", III, 385.

43. *ibid*, I, 376.

entrusted with it."⁴⁴

Besides wishing congressmen ineligible to other office, certain men wanted them serve without salary. Grayson in the Virginia convention declared himself in favor of this and cited the English house of commons as an example.⁴⁵ Sedgwick in the Massachusetts convention urged that it would be safe to allow congressmen to set their own salary. He pointed out that it was possible in England for two hundred years but they had never done it.⁴⁶

A legislature having been provided, it was necessary to provide for meetings of it and for a quorum. Only one instance was found in which European precedent was forwarded in regard to meetings. On August 7 Sherman "was decided for fixing the time, as well as for frequent meetings of the Legislative body....frequent meetings of Parliament were required at the Revolution in England as an essential safeguard of liberty."⁴⁷ One instance also was found of a reference to Europe on the question as to what a quorum for conducting business should be. August 10 Mercer "was for leaving it to the legislature to fix the Quorum, as in Great Britain, where the requisite number is small & no inconveniency has been experienced."⁴⁸

European governments were also searched when the question of suffrage in the two houses of congress was discussed. Instances were found of the mention of the practice in England, Holland, and

45. Elliot, "Debates", III, 371.

46. Elliot, "Debates", II, 53.

47. Farrand, "Records", II, 199. On this same day Gouverneur Morris moved to strike out Dec. and insert May for the time of meeting. "It might frequently happen that our measures ought to be influenced by those in Europe, which were generally planned during the winter and of which intelligence would reach us in the spring."

48. Farrand, "Records", II, 251.

44. Farrand, "Records", I, 391.

Germany. On June 11 Sherman proposed each state to have one vote in the senate, saying, "The House of Lords in Eng.... had certain particular rights under the Constitution, and hence they have an equal vote with the House of Commons.that they may be able to defend their rights."⁴⁹ Ellsworth likewise wished the suffrage to remain the same as under the confederacy and made a motion to that effect on June 29. He held that the large states could still maintain their superiority as Holland had done in the Dutch confederacy.⁵⁰ Wilson objected to equal suffrage in the senate because the minority would rule the majority. Ellsworth said this was the case in England because the House of Lords was only a small part of the people and had a negative on laws.⁵¹ Madison,however, argued for proportional votes in the senate. He gave the Dutch confederacy as an example. In this he declared that the votes of the provinces were equal but that Holland controlled the whole republic because she supplied half of the money. He expected the same result in the United States with equal suffrage.⁵²

Just how much and what powers should a legislature constructed on these lines exercise? This was indeed a perplexing question, some holding that the sum total was too much. Kingsley declared in the Massachusetts convention that this was the case and he pointed to the seizure of Rome by the decemvri and to the manner in which the English parliament continued itself in power. He thought the American congress could do the same through its control of the elections, purse, and army.⁵³ But on the other hand

.....
49. Farrand, "Records", I, 196.

50. ibid, 478.

51. ibid, 484.

52. ibid, II, 9.

53. Elliot, "Debates", II, 62.

some held that congress did not have enough power to prevent the encroachments of other departments. Lee in the Virginia convention answered this by declaring, "If the House of Commons in England, possessing less power, are now able to withstand the power of the crown,- if that House of commons, which has been undermined by corruption in every age, with far less powers than our representatives possess, is still able to contend with the executive of that country, what danger to fear that our representatives cannot successfully oppose the encroachments of the other branches of the government?"⁵⁴

In addition to comparing the aggregate of the powers of congress with those exercised by similar bodies in Europe, the framers and ratifiers looked to European practice when they gave congress certain definite powers. To the English constitution we owe the provision that money bills must originate in the lower house.⁵⁵ On June 13 Gerry moved to restrain the senate from originating money bills and pointed to the British constitution as a reason for his motion.⁵⁶ Randolph also saw in the British government a reason for this discrimination when on August 11 he remarked that if inequality existed in the senate, the large states would consider it as an aristocratic body and expect it to be guarded against as in Great Britain.⁵⁷ Some men even went so far

.....
54. Elliot, "Debates", III, 43.

55. In all the discussion on this subject, only one reference to another country was found. Mason on August 13 wanted the house to have this power. He "compared the case to Poyning's law & and signified that the House of Reps. might be rendered by degrees like the parliament of Paris, the mere depository of decrees of the Senate unless it only had the power to originate money bills." Farrand, "Records," II, 274.

56. Farrand, "Records", I, 233.

57. Farrand, "Records", II, 263.

as to wish the senate to not even have the power of amending money bills. Grayson in the Virginia convention objected to allowing the senate to have anything to do with money bills. He pointed out that in England the House of Lords could not amend them.⁵⁸

But those who desired that the senate should exercise this power along with the house declared that conditions in the United States were different from those in England. In the first place the senate would be a representative body and there was no necessity of guarding against it as in England. Then too, it was urged that there would be no executive with power to dissolve congress when altercations arose, as in England. Wilson states this very forcibly when he said that "Queen Anne was obliged to dissolve her Parliamt in order to terminate one of those obstinate disputes between the two Houses. Had it not been for the mediation of the crown, no one can say what the result would have been."⁵⁹ It was likewise contended that it was not necessary to give one house precedence over the other in money matters because the executive in England was hereditary and would have more sympathy with the upper house.⁶⁰ Yet another danger was expected by some to arise from this provision. Wilson declared that the house of representatives would put "riders" on a bill and he cited a case in England where this had been done.⁶¹ In the matter of money bills meaning a "tax bill"; then, England served as a model even though many argued that the case was not analagous.

Closely allied to the power of originating money bills is the power of taxation. Some objected to allowing the same body to have

58. Elliot, "Debates", III, 376, 317

59. Farrand, "Records", I, 546.

60. ibid, III, 136.

61. ibid, II, 275.

control of the sword and purse. England was cited as an example of this.⁶² On the matter of indirect taxes greatest dispute arose, some holding that congress should have this power, others that it should not. The former cited various European countries for precedent. In the Connecticut convention Ellsworth urged that all nations had seen the necessity and propriety of raising money by indirect taxation. The Swiss raised most of their entire revenue on salt, England raised eight million pounds per annum on consumption; Holland used indirect taxes almost exclusively.⁶³ Hamilton in the twelfth number of "Federalist" conciliated the free-holders and property owners by pointing out that they will not be called upon to pay taxes according to wealth. He went on to show that indirect taxes had been used more than direct ones even in Great Britain where the government was very strong. France also was cited in this essay as an argument for indirect taxes. Gorham in the Massachusetts convention was in favor of an import on luxuries as making the rich pay. He showed that in England and France the taxes were as high as one hundred per cent on some articles.⁶⁴

Some consideration was also given to taxes on exports, but in general it was held from the first to be a bad idea. Gerry on August 21 in the federal convention opposed taxes on exports, saying that it would enable the central government to oppress the states as England was oppressing Ireland.⁶⁵ A slightly different view was held by some who thought that eventually taxes on exports would be good but that the country was not yet ready for them. In this

62. Elliot, "Debates", II, 195.

63. *ibid*, 192.

64. *ibid*, 106.

65. Farrand, "Records", II, 362.

connection it was pointed out that England was taxing wool which was exported from the country.⁶⁶

There was fear that congress would have too much taxing power. A good example of this was given when Williams in the New York convention urged that congress should not have so much power in this field. He said, "In England, for instance, the people are not only oppressed with a variety of other heavy taxes, but, if my information is right, absolutely pay taxes for births, marriages, and deaths, for the light of heaven and even for paying their debts. What reason have we to suppose that our rulers will be more sympathetic and heap lighter. burdens upon their constituents than the rulers of other countries?"⁶⁷

Some men desired congress to have certain powers of taxation specified in the constitution but did not want it to have the power to lay new taxes. Realizing this, Hamilton in the thirtieth number of the "Federalist" pointed out that such action would lead to great tyranny. He drew an illustration from the Ottoman Empire in which the sovereign had no right to impose a new tax. He wrote, "The consequence is that he permits thegovernors of provinces to pillage the people without mercy; and, in turn, squeezes out of them the sums of which he stands in need."

European writers were also repeatedly referred to in the matter of taxation. Montesquieu being most often mentioned. Wilson in the Pennsylvania convention quoted Montesquieu in references to

66. Farrand, "Records", II, 362.

67. Elliot, "Debates", II, 340.

the tax system of the Lycian confederacy and Holland. That writer gave Holland as contributing according to power, the Lycian cities according to suffrages. He quoted, "Were I to give a model of an excellent confederate republic, I should pitch upon that of Lycia."⁶⁸ Williams in the New York convention said, "The great Montesquieu says that a poll tax upon the person is indicative of despotism, and that a tax upon property is congenial with the spirit of free government."⁶⁹

As has been stated in the introduction, commerce with Europe played an important part in the formation of the constitution. But it was in the light of what would happen in the future. Only a few references to European practice in the matter of controlling commerce are to be found in the material of this period. Madison in the forty second "Federalist" said that the necessity of regulating trade between states was shown in other countries." In Switzerland each canton is forced to allow goods to pass through it. In Germany it is a law of the empire that the provinces and states shall not lay tolls or customs on bridges, rivers or passages without the consent of the emperor and the diet....In the Union of Netherlands, its members could not establish imposts disadvantageous to their neighbors, without general permission."

In regard to the regulation of slave trade certain members of the federal convention wished to have a provision in the constitution to the effect that it should cease. Mason pointed to

68. Elliot, "Debates", II, 483. He also quoted from Neckar, "Population can therefore be only looked on as an exact measure of comparison when the provinces have resources nearly equal; but even this imperfect rule of proportion ought not to be neglected; and of all the objects which may be subjected to a determined and positive calculation, that of the taxes to the population."

69. Elliot, "Debates", II, 340.

European countries that had abolished the slave trade. He mentioned Greece, Sicily, and Rome. Dickinson said that France and England excluded the importation of slaves and that Greece and Rome had been made unhappy by them. But Pinckney declared that even if slavery was wrong, it was justified by the rest of the world, and he cited Greece, Rome, France, England, and Holland as countries in which slavery had existed or did exist.⁷⁰

The next power given to congress which concerns us is the power to make uniform rules of bankruptcy. One instance was found of a reference to European laws on this matter. Sherman, "observed that Bankruptcies were in some cases punishable with death by the laws of England & he did not chuse to grant a power by which that might be done here."⁷¹

Coming now to the provision allowing congress to keep an army we find that, in the main, Europe affected the makers of the constitution in their desire for a standing army by furnishing a cause for such an army. Again and again in the records is emphasized the idea that a standing army was necessary to protect against possible attack from Europe. However, England was referred to as a precedent in the matter of standing armies. Some argued that the legislature should not have the power to keep a standing army because it would be dangerous. An excellent example of this feeling was given when Mason said in the Massachusetts convention, "Was it not with this that Caesar passed the Rubicon, and laid prostrate the liberties of his country?....Britain attempted to enforce her arbitrary measures by a standing army."⁷² But at the same time

.....
70. Farrand, "Records", II, 370-372.

71. *ibid*, 489.

72. Elliot, "Debates", II, 136.

England was cited as a precedent for giving congress the right to control a standing army in times of peace. Taylor in the Massachusetts convention declared that it was a new idea that the legislature could not keep a standing army. He showed that Charles II had kept 5000, James II, 30,000 and when William III came to the throne of England "it was declared unconstitutional to raise or keep a standing army, in the time of peace without consent of legislature." But it could be kept with the consent of the legislature and this should be the situation in the United States.⁷³ He also argued that there was more danger from a standing army in England because of the seven-year legislature than in America with two-year congress. Another objection to the plan as it was proposed, was that congress would have both the power of declaring and waging war and it was pointed out that in England the king declared war and the House of Commons gave the means of carrying it on.⁷⁴ In addition to England's actual experience in the matter of standing armies, one English writer was quoted. In the Massachusetts convention it was pointed out that Pitt had declared standing armies to be dangerous and that instead the militia should be kept in order.⁷⁵

One other power of congress had a European precedent. This was the power to provide a capitol. Some objected to allowing congress to govern the capitol on the ground that it would be abused as in Europe. Grayson in the Virginia convention thought that exclusive jurisdiction should be guarded against because it might result in exclusive immunities and privileges as in Europe. He said that

73. Elliot, "Debates", II, 98.

74. ibid, III, 172.

75. ibid, II, 80.

in Russia and Prussia every possible step has been taken to aggrandize the capitol.⁷⁶

Having provided congress with certain powers, the question arose as to how much publicity should be given to the acts of congress. It was urged that there should be no secret meetings and the fact that in England the sessions of parliament were open to the public was referred to.⁷⁷ In connection with a journal said it was absurd to expect a great body to publish everything and he showed that in Great Britain some things were not published.⁷⁸

V.

European Influence upon the Executive.

We have seen that Europe had its effect upon the form of government in general and upon the provisions for congress. Let us see now to what extent Europe furnished specific examples in the organization of the executive. We shall see that history and government were searched on the questions of the number of the executive, length of term, the method of election, qualifications, salary and powers.¹

The fear of a monarchy led many influential men to desire a plural executive and they drew, in the main, their arguments for this from English precedent. It was argued that in England a council of revision was necessary to advise the king and to be responsible for the acts of the king. This really amounted to a plural

.....
1. The impeachment of the president will be discussed in connection with the judiciary.
.....

76. Elliott "Debates", III, 431-433.

77. ibid, 400.

executive and it was held that Americans should follow this example. Sherman in the Philadelphia convention on June 4 stated this idea very clearly when he said, "Even in G.B. the king has a council; and though he appoints it himself its advice has its weight with him, and attracts the confidence of the people."² But in answer to this, it was again and again pointed out that there was no analogy between the English government with its hereditary monarch and the United States, in which the executive would be elective.³

Those who were opposed to the plural executive also drew illustrations from history showing that such plans had not worked in the past. In the "Federalist"⁴ it was pointed out that Roman history "records many instances of mischiefs to the republic from the dissensions between the consuls, and between military Tribunes who were at times substituted for consuls." This statement was also made, "The Decemvirs of Rome, whose name denotes their number, were more to be dreaded in their usurpation than any one of them would have been." It also mentioned that the Achaean League had had two praetors and had been compelled to abolish one of these. Wilson thought that a plural executive "would probably produce a tyranny as bad as the thirty Tyrants of Athens, or as the Decemvirs of Rome."⁵ Again, Butler on June 2 in answer to Randolph, who opposed a single executive, declared that a plural executive would tend to sectionalism especially disastrous in military matters. He referred to the "opportunity he had had of seeing the manner in which a plurality of military heads distracted Holland when

.....
2. Farrand, "Records", I, 97.

3. An excellent example of this is in the "Federalist" No.60.

4. No. 60

5. Farrand, "Records", I, 74.

threatened with invasion by the imperial troops. One man was for directing the force to this part, another to that part of the country, just as he happened to be swayed by prejudice."⁶ Pierce in his notes for this day, reports Butler as saying that "when he was in Holland the States general were obliged to give up their power to a French man to direct their military operations."⁷

Even after it was decided that there should be a single executive, many wished a council of revision as a check on the powers of the president. Dr. Franklin was one of the strongest advocates of this plan. He believed that if the executive were single we would be harassed like Poland with factions for the election of successors. Franklin also thought that Holland was at that time tending toward a hereditary monarchy and he felt that such would be the case in the United States unless the executive were plural.⁸ Franklin wanted this council of revision especially in the matter of appointment. He felt that one person could not appoint well and as an illustration, he said that many bad governors had been sent to the colonies from England where the appointive powers lay with the king only.⁹

Two extremes were urged in regard to the number of years for which the executive so constituted should serve. On the one hand were those who desired a long-term executive, some even wanting a monarchy. Others desired an executive with a short term not re-eligible to election.¹⁰ Of the former, Hamilton was perhaps the most ardent and in a speech of June 18, he drew from history il-

.....
6. Farrand, "Records", I, 89.

7. *ibid*, 92.

8. Franklin, "Works", V, 144.

9. Farrand, "Records", II, 542.

10. No instance of a reference to European countries as an example of a short-term executive was found.

lustrations of his points. He thought that no good executive could be established on republican principles. He declared that the English government was the only model on this. "The Hereditary interest of the King was so interwoven with that of the Nation, and his personal emoluments so great that he was placed above the danger of being corrupted from abroad- and at the same time was both sufficiently independent and sufficiently controlled, to answer the purpose of the institution at home. One of the weak sides of Republics was their being liable to foreign influence and corruption. Men of little character acquiring great power become easily the tools of intermeddling neighbors. Sweden was a striking instance. The French and English had each their parties during the late Revolution which was effected by the predominant influence of the former."¹¹

However, while the constitution was being ratified and many were objecting that the term of the executive was too long, Hamilton argued in favor of the four-year term. He wrote, "If a British House of Commons from the most feeble beginnings, from the mere power of assenting or disagreeing to the imposition of a new tax, have by rapid strides reduced the prerogative of the crown and the privileges of the nobility within the limits they conceived to be compatible with the principle of a free government, while they raised themselves to the rank and consequence of a co-equal branch of the legislature," he urged that we need have no fear from an executive elected for four years.¹²

How should this executive be elected? It was suggested by some that he be elected by the legislature.¹³ The opponents of this

11. Farrand, "Records", I, 239. 12. "Federalist", No. 61

13. Pickney was greatly in favor of this plan of election.

plan said that it would cause corruptions as had been the case in Poland¹⁴ and would make the president dependent upon the legislature. Gouverneur Morris spoke warmly and frequently against the proposed plan of election by the legislature. July 24, he said, "Some leader of party will always covet his seat, will perplex his administration, will cabal with the Legislature, till he succeeds in supplanting him. This was the way in which the King of England was got out, he meant the real King, the Minister. This was the way in which Pitt. (Ld. Chatham) forced himself into place. Fox was for rushing the matter still farther. If he had carried his India bill, which he was very near doing, he would have made the Minister, the King in form almost as well as in substance. Our President will be the British Minister, yet we are about to make him appointable by the Legislature."¹⁵ On the following day Madison made a speech on this subject. He pointed out that if the executive were elected by the national legislature, the office would be open to bribery on the part of foreign nations. He said that such had been the case in Germany until the emperor became hereditary, the election interested all Europe and was much influenced by foreign influence. In Poland the election of the magistrate "has at all times produced the most eager interference of foreign princes, and has in fact at length slid entirely into foreign hands."¹⁶ Europe influenced the provisions for the election of the president in a negative way,-

.....
14. Farrand, "Records," II, 30.

15. Farrand, "Records", II, 104. In England where the ministry fails to receive the support of the House of Commons, it "goes to the country"; i.e. there is an election. If the country returns supporters of the ministry, there is no change of ministry. But if the opposition returns a majority to the house, the ministry is overthrown and a new one comes into power.

16. Farrand, "Records", II, 110.

it showed that election by the national legislature would not do.

The constitution next provides certain qualifications for the executive. Only one instance was found of a reference to European countries when the qualifications of the president were being discussed. July 24 Wilson said that age did not necessarily mean lack of ability in performance of duties. He mentioned a Doge of Venice who was elected after he was eighty. Popes also were often old when elected and they were very capable people. "What an irreparable loss would the British Jurisprudence have sustained had the age of 50 been fixed there as the ultimate limit of capacity or readiness to serve the public. The great luminary (Ld. Mansfield) held his seat for 30 years after his arrival at that age."¹⁷

The constitution provides that the president shall receive compensation for his services. In the records of this period, only one person referred to European precedent in regard to the salary of the president. Franklin wished the executive to receive no remuneration. He did not want the executive to be paid except enough to defray expenses. "Place before the eyes of such [ambitious and avaricious] men a post of honor that shall at the same time be a place of profit, and they will move heaven and earth to obtain it. The vast number of such places it is that renders the British gov't so tempestuous. The struggles for them are the true sources of all those factions which are perpetually dividing the nation, distracting its councils, hurrying sometimes into fruitless and mischievous wars, and often compelling a submission to dishonorable terms of peace."¹⁸ In answer to charges that suitable men cannot be found to serve for nothing, Franklin said that "The high sheriff

17. Farrand, "Records", II, 103.

18. ibid, I, 82.

of a county in England is an honorable office, but not a profitable one." It was expensive and not sought for. The members of judiciary department of France did not receive enough to pay expenses.¹⁹

Having provided an executive, the makers of the constitution must needs decide with what powers he should be vested. These were the power of appointment, the treaty making power, and the veto.

In respect to the power of appointment, England served as an example in which this power was too strong. Dickinson on June 2 urged that the executive should not be of unlimited power. He held that the weight of the British crown lay in the fact that there were certain attachments to it.²⁰ When this point was brought up later on August 24, Sherman objected to the phrase, "and shall appoint officers in all cases not otherwise provided for by this constitution." He thought that some should be appointed this way but that others should not, especially officers in the army in time of peace.²¹ He declared that "herein lay the corruption in G. Britain. If the executive can model the army, he may set up an absolute government; taking advantage of the close of a war and an army commanded by his creatures." Roger Sherman speaking in the first house of representatives²² said, "The convention, who formed this constitution, thought it would tend to secure the liberties of the people, if they prohibited the president from the sole appointment of all officers. They knew that the crown of Great Britain, by having that prerogative, has been enabled to swallow up the whole administration; the influence of the crown upon the Legislature subjects both

19. Farrand, "Records", I, 84-85.

20. *ibid*, I, 86.

21. *ibid*, II, 405.

22. June 18, 1789.

Houses to its will and pleasure." He pointed out that perhaps in England the people wanted that. But, he said, in America, they did not and the president was not given the sole appointive power.²³

In the matter of treaty making, there was one group of men who desired the president alone to have this power. Mercer on August 15 expressed this idea in the constitutional convention and cited England as his precedent.²⁴ At first it seemed as if the president would be given the sole treaty making power. When it was suggested that the legislature should participate in this, there was always an objection to it and England was pointed to as an example. For instance, on August 23 Gouverneur Morris wanted as an amendment to the treaty-making power of the president, "but no Treaty shall be binding on the U.S. which is not ratified by law." This was immediately objected to. Wilson declared, "In the most important Treaties, the King of G. Britain being obliged to resort to parliament for the execution of them, is under the same fetters as the ammendment of Mr. Morris will impose on the Senate."²⁵

Butler, however, was greatly in favor of the co-operation of the legislature in the making of treaties and he too drew examples from history. He thought it would be a guard against "ambitious and corrupt Presidents..... He mentioned the late perfidious policy of the Statholder in Holland; and the artifices of the Duke of Marlbro' to prolong the war of which he had the management."²⁶

There was expressed again and again while the constitution was being ratified, the fear that the president was not sufficiently

.....
23. Farrand, "Records", III, 357.

24. Farrand, "Records", II, 297.

25. ibid, II, 392-393.

26. ibid, II, 541. Sept. 7.

checked in the treaty-making power. But it was just as often pointed out that in England, the king has the entire power to make treaties and that the provisions in the constitution providing for the approval of the senate did not give the president as much power as the king of England had.²⁷ A speaker in the convention of South Carolina declared, "The king of England when he concluded one,²⁸ did not think himself warranted to go further than to promise that he would endeavor to induce his Parliament to sanction it."²⁹

But on the other hand there were those among the ratifiers who would invest the president with the sole treaty-making power. These drew examples from England and France. Rutledge in the South Carolina Convention said that in England treaties were not necessarily ratified and he pointed to the treaty of peace with the United States as an example. Another speaker in this same convention showed that edicts in France did not have to be registered and "even the kings of England had power to make treaties of peace or war."³⁰

Another side of treaty-making may perhaps be discussed here although it is a little beside the point. This phase is whether or not a treaty should be the supreme law of the land. Henry in the Virginia convention urged that it should not be. Madison in answer to him showed that such was the case in England and he referred to Blackstone's "Commentaries" as his authority.³¹ Henry argued that treaties were not on the same footing as in England. Nicholas in turn quoted from Blackstone to show that they were and he further showed that neither the king nor the president could make a treaty

.....
27. Elliot, "Debates", IV, 128.

28. Treaty.

29. Elliot, "Debates," II, 271.

30. Elliot, "Debates," II, 367-368. In answer it was declared that treaties in England were discussed in parliament.

31. *ibid*, 501.

which was contrary to the constitution of the country.³² But most men realized the necessity of having treaties supreme in the land and binding on every subject. Pinckney in the South Carolina convention declared, "Indeed the doctrine that the king of Great Britain may make a treaty with a foreign state, which shall irrevocably bind his subjects, is asserted by the best writers on the laws and constitution of England- particularly by Judge Blackstone, who, in the first of his Commentaries, (ch.7, p. 257) declares 'that it is the king's prerogative to make treaties, leagues, and alliances, and that no other power in the kingdom can legally delay, resist, or annul them.' If treaties entered into by congress are not to be held in the same sacred light in America, what foreign nation will have any confidence in us.Burlamaqui (French), another writer of great reputation on political law, says 'that treaties are obligatory on the subjects of the powers who enter into treaties; they are obligatory as conventions between the contracting powers; but they have the force of law with respect to their subjects.'"³³ Barnwell in the South Carolina convention observed "that the most free and enlightened notions of the world had a federal head, in which this power was established- he meant the Amphictyonic council of the Greeks, which was the palladium of their united liberties, and until destroyed by the ambition of a few of the states of Greece, was revered by that jealous people as a cornerstone of their federal union."³⁴

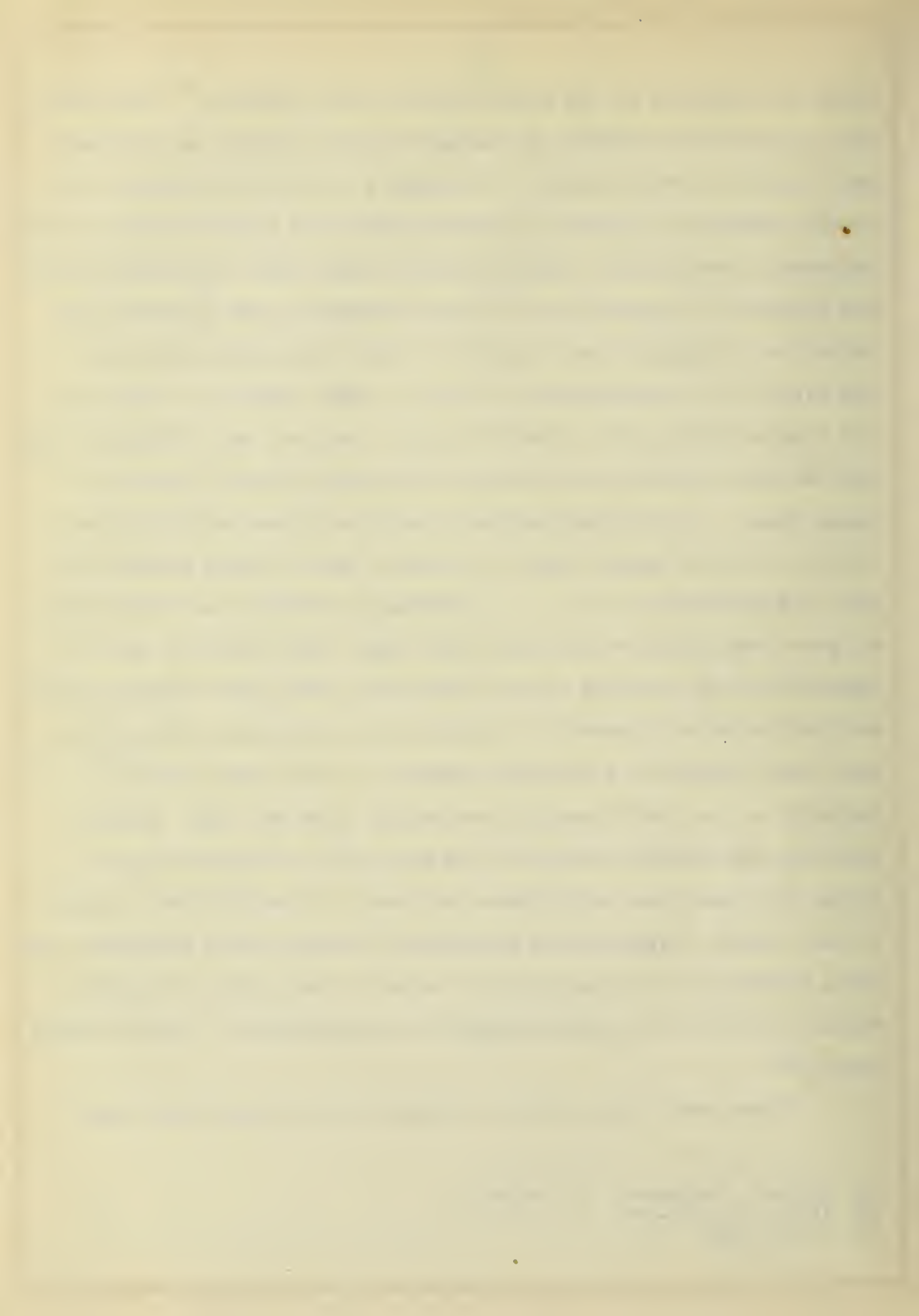
There were three contrary ideas which were presented when

.....

32. Elliot, "Debates", II, 506-508.

33. *ibid*, IV, 278-279.

34. *ibid*, 293.



the question of the president's veto was discussed. In the first place, there were those who desired the executive to have an absolute veto. Their main argument was drawn from England. June 4 "It was mentioned (by Col. Hamilton) that the King of G.B. had not exerted his negative since the Revolution" and their power was considered harmless.³⁵ Gouverneur Morris also desired the president to have a veto, saying that it would be a provision against the popular government and would be a weapon if there were an attempt to overthrow the executive. If it were overturned, tyranny would be the result as in England.³⁶ Wilson also declared that after the destruction of the king of Great Britain that a more pure and un-mixed tyranny sprang up in parliament than before.

On the other hand there were those who desired that the executive should have a negative, but a qualified one. One method proposed was to have the judges participate as a revisory council with the president. This committee and the president was to have the power of vetoing the bills passed by congress. Wilson July 21 urged that this would be necessary in order that the jurisdiction of the judges should not be evaded. But Gorham opposed this saying that it would not be necessary. "The judges in England have no such additional provision for their defense, yet their jurisdiction is not evaded."³⁷ Another argument for associating the judges with the executive in the exercise of the veto was that the president would need the support of the judges. Gouverneur Morris brought this out in the convention July 21, when he urged that there

.....
35. Farrand, "Records", I, 98. Franklin answered that the reason the king had not done this was because parliament was so bribed that it passed only what the king wanted.

36. *ibid*, II, 299.

37. *ibid*, 73.

was a difference between the English king and the president. He held that the former had so much prerogative that he would never surrender any of it, while in the United States the executive would be weak and need the help and support of the judges.³⁸

Against this it was argued that the association of the judiciary and the executive would violate the separation of powers. July 21 Madison said that he could not see the objection to the association of judges in the revisionary power that it would violate the separation of power. England was the best example of this separation of power and there "it was not only the practice to admit the judges to a seat in the legislature, and in the Executive Councils, and to submit to their previous examination all laws of a certain description, but it was a part of their constitution that the Executive might negative any law whatever; a part of their constitution which had been universally regarded as calculated for the preservation of the whole."³⁹ Madison held that the association of the judges with the executive would not violate the theory of the separation of powers.

There was some objection to the plan which was finally adopted, the power of the president to veto a bill with the provision that a two-thirds vote would overrule the veto. Madison thought that if a proper proportion of the legislature were required to overrule the president's veto, it would amount to the same thing as no veto because no man would be so strong as to defy the legislature." "The King of G.B. with all his splendid attributes would not be able to withstand ye unanimous and eager wishes of both houses of parliament."⁴⁰

.....
38. Farrand, "Records", II, 76.

39. *ibid*, 77.

40. *ibid*, I, 100.

In the other extreme position were those men who desired that the executive should have no negative at all. Luther Martin said that the precedent of the king's veto in England would not apply. He held that the king was a separate and distinct estate in England with distinct rights and it was necessary for the king to have this veto to preserve his rights. But in the United States the executive was only an official of the government and he did not need this power.⁴¹ It was urged in the Pennsylvania convention not to give the president the veto power because it was unnecessary and would not be exercised, as was the case in England.⁴²

Although it was not incorporated in the constitution, yet there was a great deal of discussion on the question of giving the central government the power to veto laws passed by the various states and perhaps it will not be beyond the field of this paper to include a brief discussion of this. In the main, England furnished the example.⁴³ Madison in his preface to his notes wrote that this negative "was suggested by the negative in the head of the British Empire, which prevented collisions between the parts and the whole and between the parts themselves."⁴⁴ Pinckney in some observations on the constitution said that although the colonies revolted from Great Britain, they never objected to the negative

.....
41. Farrand, "Records," III, 203.

42. Elliot, "Debates", II, 472. Wilson replied that there was no reason why it should not be effectively exercised.

43. Pinckney declared the lack of such a negative and consequently a strong executive was in part the cause of the weakness of the ancient confederacies of Greece, and of the Helvetic and Belgic Leagues. Farrand, "Records," III, 114.

44. Farrand, "Records," III, 549.

of the king. He went on, "As a part of his gov't it was considered proper. Are we⁴⁵ now less a part of the Federal Government than we were then of the British?"⁴⁶ But Madison was the staunch supporter of this plan and again and again urged that the central government have the power to veto state acts. Typical were his statements of July 17 when he declared, "Its utility is sufficiently displayed in the British System. Nothing could maintain the harmony & subordination of the various parts of the empire but the prerogative by which the crown, stifles in the birth every act of every part tending to discord or encroachment. It is true the prerogative is sometimes misapplied thro' ignorance or a partiality to one particular part of the empire: but we have not the same reason to fear such misapplications in our system."⁴⁷

VI.

European Influence upon the Judiciary.

In the fourth place Europe affected the third great department of government, the judiciary. The practice on the continent was discussed in connection with the impeachment powers of congress, the court system proper, the definition of treason, the provisions regarding habeas corpus and ex post facto laws, and the bill of rights.

,.....

45. South Carolina.

46. Farrand, "Records", III, 114.

47. Pinckney urged that this power be given to congress. Lansing asked if a gentleman from one state could judge a law to operate in another. This, he declared, would be worse than the English negative. Farrand, "Records" I, 337.

Hamilton in the sixtyfourth "Federalist" wrote that the model for the plan of impeachment was taken from Great Britain in which the House of Commons preferred impeachment and the House of Lords decided upon the case. Similarly a member of the Pennsylvania convention while defending the plan for impeachments declared, "The House of Lords, in Great Britain are judges in the last resort in all civil cases, and, besides, having the power of impeachment."¹ So, then, the general plan for impeachment was taken from the English plan as it was then.²

Most men of this time feared and abhorred anything that savored of monarchy. The provisions for the impeachment of the president were put into the constitution because of this fear. It was argued from examples in history that executives which were not impeachable were dangerous. An illustration was drawn from Holland by Franklin. He mentioned July 2 the case of the Prince of Orange
.....

1. Elliot, "Debates," II, 554.
2. Here too, Patrick Henry violently opposed the constitution. In the Virginia convention he declared, "But I beg gentlemen to consider the American impeachment. What is it? It is a mere sham - a mere farce. When they do any thing derogatory to the honor or interest of their country, they are to try themselves. Is it so in England? The history of that country shows that they have blocks and gibbets. The violators of the public interest have been tried justly and impartially, and perished by those necessary instruments of justice. Can there be any security where offenders mutually try one another? I hope gentlemen will consider the necessity of amendment in this clause." Elliot, "Debates," III, 512. But such objections were very rare.

during the late war. He said, "An argreement was made between France and Holland; by which their two fleets were to unite at a certain time and place. The Dutch fleet did not appear. Everybody began to wonder at it. At length it was suspected that the Statholder was at the bottom of the matter. This suspicion prevailed more and more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formable, he gave birth to the most violent animosities & contentions. Had he been impeachable, a regular & peaceable inquiry would have taken place and he would if guilty have been duly punished if innocent restored to the confidence of the public."³ It was also urged by some that while hereditary executives were open to bribery, an elective one would be still more so. Gourverneur Morris voices this opinion when on July 2 he declared that an elective executive might be bribed by a greater interest to betray his trust. He went on, "One would think the king of England well secured agst bribery. He has, as it were, a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV." Then he declared that bribery could be expected still more where the executive did not have such a personal interest in the country.⁴ Ezra Stiles in his diary gave the following reasons for making the president impeachable, "As to a President, it appeared to the Opin. of Convention, that he shd be a Character respectable by the Nations as well as by the foederal

.....
3. Farrand, "Records," II, 67. King remarked that the Statholder was not the same as the American president. The former was in for life and needed impeachment. The latter was elected periodically and did not need impeachment.

4. Farrand, "Records", II, 68-69.

Empire. To this end that as much Power shd be given him as could be consistently with guardg against all possibility of his ascending in a Tract of years or Ages to Despotism & absolute Monarchy - of which all were cautious. Nor did it appear that any Members in Convention had the least idea of insidiously lay of the Founda of a future Monarchy like the European or Asiatic Monarchies either Antient or modern. But were unanimously guarded and firm against every Thing of this Ultimate Tendency. Accordingly they meant to give considerable weight as supreme Executive, but fixt him depend-ent on the States at large, and at all times impeachable."⁵

Turning now to the court system, we find only a few references on this. On June 5 Wilson and Madison moved "that the national legislature be empowered to institute inferior tribunals." To this Butler replied, "We must follow the example of Solon who gave the Athenians not the best gov't he could devise but the best they would receive." He declared that the people would not allow con-gress to have this power.⁶ One reference was found in which foreign practice was cited as an example for election of judges. On this same day⁷ Franklin showed what the Scotch practice had been in this respect. In that country nomination proceeded from lawyers "who always eelected the ablest of the profession in order to get rid of him and share his practice among themselves ." Franklin did not want this to be the practice in the United States."⁸ When the

.....
5. Farrand, "Records", III, 169.

6. ibid, I, 125.

7. June 5.

8. Farrand, "Records", I, 120.

length of term for the judges was discussed, there was some reference to English government. English judges serve during good behavior. On August 27 Dickinson stated that he wanted the judges to serve during good behavior "provided that they may be removed by the Executive on the application by the Senate and House of Representatives." Morris saw in this a contradiction but Sherman in answer to him showed that this was like the situation in Great Britain. Wilson thought that the provision in England would be less dangerous because the House of Lords and House of commons would not be likely to concur at the same time. He felt that the two houses in the American legislature would concur at the same time and cause the judiciary to be weakened.⁹ A few references were found on the jurisdiction of the courts. A member of the Massachusetts convention declared, "On the whole.....we shall find Congress possessed of powers enabling them to institute judicatories little less inauspicious than a certain tribunal in Spain, which has long been the disgrace of Christendom- I mean that diabolical institution: the Inquisition."¹⁰ There was some objection to giving the supreme court appellate jurisdiction. In the Pennsylvania convention Judge Blackstone was quoted in support of such jurisdiction.¹¹

When treason was first discussed it was provided that that crime should consist "only in levying war against them, or in adhering to their enemies." Some members of the convention did not think this extensive enough and referred to the English practice on this subject. Randolph voiced the sentiment of other members when he declared that the clause defining treason was defective in adopting

.....
9. Farrand, "Records" II, 428-429.
10. Elliot, "Debates", II, 111.
11. ibid, 518.

the words, "'in adhering only.' The British Stat adds: 'giving them aid and comfort' which had a more extensive meaning."¹² It seems, then, that the English definition was incorporated into our constitution almost intact.

One objection was found to the provision in the constitution that the writ of Habeas Corpus "shall not be suspended, unless when in cases of Rebellion or Invasion the public safety may require it." Henry in the Virginia convention stated, "We have infinitely more reason to dread general warrants here than they have in England, because there, if a person be confined liberty may be quickly obtained by the writ of habeas corpus. But here a man living many hundred miles from the judges may get in prison before he can get that writ."¹³ This was part of his reason for demanding a bill of rights.

One reference was also found in regard to ex post facto laws. The constitution provides merely that no such law shall be passed. On August 29 Dickinson "mentioned to the House that on examining Blackstone's Commentaries he found that the terms 'ex post facto' related to criminal cases only, that they would not consequently restrain the States from retrospective laws in civil cases and that some further provision for purpose would be requisite."¹⁴

.....
12. Farrand, "Records", II, 345. One member of the Mass. convention thought that congress did not have enough power in the punishment of treason. He compared the power of congress with the extensive ones of the English parliament in this regard. Elliot, "Debates," II, 100.

13. Elliot, "Debates," III, 588.

14. Farrand, "Records", II, 448.

In its original form the constitution did not provide for a bill of rights and the lack of this was one of the strongest objections urged against the constitution when it was before the state conventions for ratification. A member of the Massachusetts convention in urging a bill of rights said, "England has been quoted for their fidelity; but did their constitution ever give such a power as is contained in the Constitution? Did they ever allow Parliament to vote an army for two years- to tax us without limitation; no one to gainsay them, and no inquiry yearly as in Britain; therefore if this constitution is got down, we shall alter the system entirely, and have no checks upon congress."¹⁵ Henry in arguing for the bill of rights declared, "I repeat, that all nations have adopted this construction - that all rights not expressly and unequivocally reserved to the people are impliedly and incidentally relinquished to rulers, as necessarily inseparable from the delegated powers." He showed that this was the case in England, Spain, and Germany.¹⁶ The provision most demanded was for trial by jury. Maryland in proposing an amendment to the provisions for trial and justice said, "The great objects of these amendments were 1st to secure the trial by jury in all cases, the boasted birthright of Englishmen & their descendants."¹⁷ Iredell perhaps best sums up the demand for specific recognition of jury trial in a speech which he made in the convention of North Carolina. He said, "In Great Britain, the people speak of the trial by jury with admiration. No

.....
15. Elliot, "Debates," II, 81.

16. *ibid*, III, 445.

17. *ibid*, II, 550. Randolph argued against jury trial in civil cases saying that there was no mention of a jury in civil cases in the English bill of rights or the magna carta. Elliott, "Debates," III, 573.

monarch, or minister, however arbitrary in his principles, would dare to attack that noble palladium of liberty. The enthusiasm of the people in its favor would, in such a case produce general resistance. That trial remains unimpaired there, although they have a considerable standing army, and their Parliament has authority to abolish it, if they please. But wo to those who should attempt it! If it be secure in that country, under those circumstances, can we believe that congress either would or could take it away in this? Were they to attempt it, their authority would be instantly resisted. They would draw down on themselves the resentment and detestation of the people. They and their families, so long as any remained in being, would be held in eternal infamy, and the attempt prove as unsuccessful as it was wicked."¹⁸

It was also proposed as an amendment by Maryland, "That the militia shall not be subject to martial law, except in time of war, invasion or rebellion" because this provision would "restrain the power of Congress over the militia, although by no means so ample as that provided by Magna Carta, and the other great fundamental and constitutional laws of Great Britain..... yet it may prove an inestimable check."¹⁹

But there were arguments against the proposed bill of rights. There were in the main three arguments against it. The first one was well stated by Wilson in the Pennsylvania convention when he declared that the bill of rights was not necessary in America as in England where the English king had all powers not taken from it while in America congress had only delegated powers.²⁰ McKean in the same convention said, "Such a thing has not been deemed essen-

18. Elliot, "Debates," IV, 140.

19. ibid, II, 552.

20. ibid, 437.

tial to liberty, excepting in Great Britain, where there is a king and a House of Lords, quite distinct, with respect to power and interest, from the rest of the people; or in Poland, the pacta conventus, which the king sings before he is crowned; and in six States of the American United States." He also quoted Locke as an authority for not having a bill of rights.²¹ Madison in the Virginia convention showed that a bill of rights was not made when England and Scotland were united and he argued that none was necessary for the United States.²² He said Scotland had had her powers reserved instead of enumerated and he held this to be the better plan.

VII.

Conclusion.

In conclusion it is interesting to note that there were certain topics on which one expected reference to European practice but on which there were none. In the first place one would expect that since the United States was the offspring of England, there would be some question as to whether there should be a codified constitution. England did not have a constitution drawn up in one document. Instead acts of parliament, court decisions, statute and common law, treaties, and great compacts made then, as they do now, the framework of the English government. But the colonies had had charters; the states had framed constitutions during the revolution; and the Articles of Confederation, inadequate as they were,

21. Elliot, "Debates," II, 540.

22. *ibid*, III, 319.

had accustomed the people to the idea of a constitution. So, on second thought, it is not so strange that reference to the English practice would be made in connection with the provision that congressmen should be free from arrest except in certain cases and that there should be freedom of speech in congress. These provisions are very similar to the English acts providing the same things. Yet, strangely enough, no mention was made of the English acts.¹ There were also two powers given to congress which seem to be of enough importance to warrant the mention of foreign practice. These are the power of coining money and providing punishment for counterfeiting and the declaring of war. Yet no instance was found when these questions were being discussed of any reference to foreign practice in similar cases.

One rather interesting reference to the customs of foreign countries was made in connection with the provision for amending the constitution. Pinckney in some observations on the constitution to the South Carolina legislature said that a large number of states were necessary, but he hoped that never again would a government be established which could be altered only by the consent of all the hazardous situation of the Netherlands.²

It is easy to underestimate the value of conscious reference to foreign practice in the making of the constitution. Too often has our constitution been lauded as a thing marvelously new. But one sees that European practice in this respect served as a sign post in 1787. In some cases it pointed out what not to do. For in-

1. Compare Nos. 107, 108, and 137 in Adams and Stephens, "Select Documents of English Constitutional History" with the first paragraph of article I, section 6 of the constitution of the U.S.

2. Farrand, "Records," III, 121. Holland was at war with Spain.

stance Europe showed that a confederate form of government was weak. Again it seemed to show at times the way to go to reach the much desired goal, a firm, strong central government.

As one looks back over this field, he is also struck with the fact that the makers of the constitution were exceedingly conscientious in their work. History, government, and the writings of publicists were searched in many instances for light when it seemed that little light was to be had. At times points were accepted almost as they were in Europe; sometimes they were rejected entirely; or again were changed to meet conditions. Two lines of an old ditty seem to apply to the constitution:

"Something new, something old,
Something timid, something bold."

BIBLIOGRAPHY.

1. Adams, George Burton and Stephens, H. Morse, "Select Documents of English Constitutional History," London, 1916.
2. Austin, James T. "The Life of Elbridge Gerry," I,1-7; II,1-97.
3. Beard, Charles A., "An Economic Interpretation of the Constitution of the United States."
4. Belnap, Neul Dinsmore, "The Public Services of Gouverneur Morris," Urbana, 1914.
5. Brown, Frederick J., "A Sketch of the Life of Dr. James McHenry," Baltimore, 1877.
6. Brown, William Garrott, "The Life of Oliber Elsworth", 1-29; 107-176.
7. Conway, Moncure Daniel, "Omitted Chapters of History Disclosed in the Life and Papers of Edmund Randolph, New York, 1889, 1-14; 43; 58-131.
8. Curtis, George Ticknor, "History of the Origin, Formation, and Adoption of the Constitution," New York, 1861, I, II.
9. Elliot, Jonathan, "Debates in the Several State Conventions on the Adoption of the Federal Constitution", Philadelphia, 1866, II, III, IV.
10. Elliot, Henry Malden, "Magna Carta Commemoration Essays," Aberdeen, 1917, 180-226.
11. Farrand, Max, "Records of the Federal Convention of 1787, New Haven, 1911; I, II, III.
12. Franklin, Benjamin, "Works", Sparks editions. Boston,1836-40; X.
13. Goddard, Henry P., "Luther Martin, 'Federal Bull-Dog'", Baltimore, 1887.
14. Hamilton, Alexander, "Works," Lodge edition, New York,1885-6; I.

15. Hamilton, J. G. deRoulhac, "William Richardson Davie," Chapel Hill, N.C., 1907.
16. Himes, Charles F., "The True John Dickinson," Carlisle, Pa., 1912.
17. Hoar, George F., "The Connecticut Compromise," Worcester, 1902.
18. Hubbard, F. M., "William R. Daire," Boston, 1834-48, 3-12; 78-100.
19. Jefferson, Thomas, "Writings", Ford edition, New York, 1894, IV.
20. Lodge, Henry Cabot, "Historical and Political Essays," Boston, 1892, 75-113.
21. Lowell, Abbott Lawrence, "The Government of England," New York, 1908, II, 472.
22. Madison, James, "Writings," Hunt edition, New York, 1900, II.
23. McLaughlin, Andrew Cunningham, "The Confederation and the Constitution," New York, 1905.
24. Mease, James, "Sketch of the Life of Robert Morris," 1823.
25. McKechnie, William Sharp, "Magna Carta," Glasgow, 1905, 231-240.
26. Morris, Anne Cary, "The Diary and Letters of Gouverneur Morris," London, 1889, I, 1-18.
27. Rawle, William, "A Sketch of the Life of Thomas Mifflin," Philadelphia, 1830, II, part II, 107-126.
28. Roosevelt, Theodore, "Gouverneur Morris," New York, 1906, 118-158.
29. Sedgwick, Theodore, "A Memoir of the Life of William Livingston," New York, 1833, 45-73; 402-423.
30. Sparks, Jared, "The Life of Gouverneur Morris," Boston, 1832, I, 1-27; 282-293.

31. Steiner, Bernard C., "The Life and Correspondence of James McHenry," Cleveland, 1907, 96-113.
32. Stillé, Charles J., "The Life and Times of John Dickinson," Philadelphia, 1891, 253-275.
33. Sumner, William Graham, "Robert Morris," New York, 1892, 11-23; 101-108.

UNIVERSITY OF ILLINOIS-URBANA



3 0112 082199974